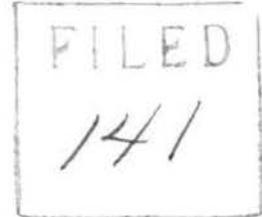


COUNTY COURT:
ROADS AND BRIDGES:

A county court may use the road and bridge fund to purchase real estate in the county for the purpose of storing machinery used to keep up and build county roads and bridges.

OPINION NO. 141

August 11, 1969



Honorable John W. Reid, II
Prosecuting Attorney
Madison County
148 East Main Street
Fredericktown, Missouri 63645

Dear Mr. Reid:

This official opinion is rendered in response to the request contained in your letter dated July 1, 1969.

The question presented is:

"Is it permissible under Missouri Revised Statute 137.555 for the County Court to use the road and bridge fund to purchase real estate, for the purpose of storing machinery used to keep up and build county roads and bridges?"

Section 137.555, RSMo 1959, in pertinent part, provides as follows:

"In addition to other levies authorized by law, the county court in counties not adopting an alternative form of government * * * in their discretion may levy an additional tax, not exceeding thirty-five cents on each one hundred dollars assessed valuation, all of such tax to be collected and turned into the county treasury, where it shall be known as 'The Special Road and Bridge Fund' to be used for road and bridge purposes and for no other purpose whatever; * * *"

This section of the statute implements Article X, Section 12(a) of the Missouri Constitution which states, in part:

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"In addition to the rates authorized in section 11 for county purposes, the county court in the several counties not under township organization, * * * may levy an additional tax, not exceeding thirty-five cents on each hundred dollars assessed valuation, all of such tax to be collected and turned in to the county treasury to be used for road and bridge purposes. * * *"

The question presented relates to the county court of Madison County, a county of the third class. For purposes of this opinion, it has been assumed that the real estate to be purchased is located in Madison County.

Section 49.270, RSMo 1959, gives the county court express authority to purchase real estate. This statute provides:

"The said court shall have control and management of the property, real and personal, belonging to the county, and shall have power and authority to purchase, lease or receive by donation any property, real or personal, for the use and benefit of the county; * * *"

Section 229.040, RSMo 1959, states:

"Whenever any public money, whether arising from taxation or from bonds heretofore or hereafter issued, is to be expended in the construction, reconstruction or other improvement of any road, or bridge or culvert, the county court, * * * shall have full power and authority to construct, reconstruct or otherwise improve any road, and to construct any bridge or culvert in such county * * * and to that end may contract for such work, or may purchase machinery, employ operators and purchase needed materials and employ necessary help and do such work by day labor."

It will be observed that the additional levy authorized by Article X, Section 12(a) of the Constitution and Section 137.555, RSMo 1959, require that such moneys be placed in "The Special Road and Bridge Fund" and be used for "road and bridge purposes." Thus, the point is not only whether the county court can purchase real estate for use and benefit of the county but whether the proposed expenditure of money is for "road and bridge purposes."

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It is clear from the statute that the county court is expressly empowered to purchase real estate for the use and benefit of the county and that the county has control and management of the property, real and personal, belonging to the county. Likewise, the county court is expressly authorized to purchase machinery to be used for road and bridge purposes and has full power and authority to construct, reconstruct or otherwise improve any county road. While the statutes do not specifically provide for the purchase of real estate for the purpose of storing machinery, the rule for interpreting statutes, that a power given carries with it, incidental or by implication, power not expressed but necessary to render effective the one that is expressed, would require the construction that authority to purchase, own and use road machinery embraces authority to buy a place for its storage, care and preservation. State ex rel Wahl v. Speer, 284 Mo. 45, 223 S.W. 655; Blades v. Hawkins, 240 Mo. 187, 112 S.W. 979.

In Everett v. County of Clinton, 282 S.W.2d 30 (Mo. Sup. Ct.), the Supreme Court held that a county has full authority to purchase real estate for the use and benefit of the county, as well as materials for road construction and repair, and it has authority to control and manage such real estate and personal property. In the opinion the court said:

"In this case there is no claim that there is any statute which expressly gives to the county power to operate a rock quarry. If such power exists, it must be looked for among those powers which can be implied only as being essential to effectuate the purpose manifested in an express power or duty, conferred, or imposed upon the county by statute. If such a power exists, it must be one related to the subject with which the county has authority to deal in discharging a duty imposed by law. King v. Maries County, supra; Blades v. Hawkins, supra. The right to acquire, own and control a rock quarry and the express grant of power to construct and reconstruct roads carries with it, we believe, the right to use and operate the quarry for county purposes and to mine, prepare and use such material on the public roads of the county. While it is true that the law is strict in limiting the authority of county courts, 'it never has been held that they have no authority except what the statutes confer in so many words. The universal doctrine is that certain incidental

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powers germane to the authority and duties expressly delegated and indispensable to their performance may be exercised.' *Blades v. Hawkins*, supra, 240 Mo. 187, 197, 112 S.W. 979, 982."

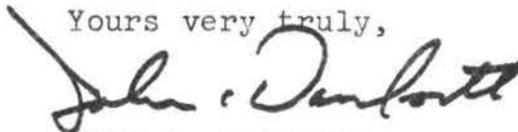
Considering the foregoing authority it is our view that an expenditure for the purchase of real estate by the county court under these circumstances is proper.

CONCLUSION

It is our opinion that a county court may use the road and bridge fund to purchase real estate in the county for the purpose of storing machinery used to keep up and build county roads and bridges.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John E. Park.

Yours very truly,



JOHN C. DANFORTH
Attorney General