

ROADS AND BRIDGES:
SPECIAL ROAD DISTRICTS:

(1) County Aid Road Trust Funds derived from motor fuel taxes may be expended by a county court on roads located in a special road district. (2) Such funds may not be expended by the county court on bridges located in a special road district. (3) A county court cannot be compelled to spend such funds in a special road district.

OPINION NO. 320

August 21, 1970

Honorable Marvin E. Proffer
State Representative
District No. 156
P. O. Box 191
Jackson, Missouri 63755



Dear Representative Proffer:

This letter is in response to your request for an opinion as follows:

"This letter is in relation to an opinion from your office for use of Highway Cart Funds within counties for special road districts. Mr. A. W. Phegley, President of the Chaffee Chamber of Commerce, asked me to get an Attorney General's Opinion to see (1) if cart funds can be used for special road district projects and (2), if the County Court refuses to use any can they be instructed to do so."

We assume the "cart funds" to which you refer is the allotment of the motor fuel tax which is required to be deposited in a trust fund known as the "County Aid Road Trust Fund" as provided for under Article IV, Section 30(a), subdivision 1, of the Constitution of Missouri.

Article IV, Section 30(a), Constitution of Missouri, provides for a tax on motor vehicle fuel. This tax money, after deducting certain costs, "shall be apportioned between the counties, cities and the state." Subdivision (1) of subsection 1 provides for the portion going to the counties and reads in part as follows:

". . . The funds credited to each county shall be used by the county solely for the construction, reconstruction, maintenance and repairs

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of roads, bridges and highways, and subject to such other provisions and restrictions as provided by law. In the absence of other controls provided by law, the state highway commission shall prescribe policy, rules and requirement for the expenditure of these funds by counties, including, among other things, highway commission approval of plans for projects on which the funds are to be used. In counties having the township form of county organization, the funds credited to such counties shall be expended solely under the control and supervision of the County Court, and shall not be expended by the various townships located within such counties. 'Rural land' as used in this section shall mean all land located within any county, except land in incorporated villages, towns, or cities." (Emphasis supplied)

Article IV, Section 30(a) (supra) provides that five percent of the net proceeds shall be deposited in a special trust fund which shall be credited to the various counties according to the formula contained therein. The funds credited to the county shall be used as set out in this section. In counties with township organization, the funds shall be expended solely under the control and supervision of the county court. It is our view that when the money is paid over to the county, it then becomes "county money" subject to expenditures limited by Section 30(a) of Article IV. If this is true, as we believe, then the expenditure of these funds becomes subject to the provisions of "The County Budget Law" (Section 50.525, RSMo 1969, et seq) regardless of the source from which it is derived (Sections 50.525, and 50.527, RSMo 1969).

Subsection (1) of Article IV, Section 30(a) provides that the funds shall be credited to each county for certain purposes and "subject to such other provisions and restrictions as provided by law." It is our view that Section 50.550, RSMo 1969, provides such restrictions. Section 50.550 reads as follows:

"The annual budget shall present a complete financial plan for the ensuing budget year. It shall set forth all proposed expenditures for the administration, operation and maintenance of all offices, departments, commissions, courts and institutions; the actual or estimated operating deficits or surpluses from prior years; all interest and debt redemption charges during the year and expenditures for capital projects.

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The budget shall contain adequate provisions for the expenditures necessary for the care of insane pauper patients in state hospitals, for the cost of holding elections and for the costs of holding circuit court in the county that are chargeable against the county, for the repair and upkeep of bridges other than on state highways and not in any special road district, and for the salaries, office expenses and deputy and clerical hire of all county officers and agencies. In addition, the budget shall set forth in detail the anticipated income and other means of financing the proposed expenditures. All receipts of the county for operation and maintenance shall be credited to the general fund, and all expenditures for these purposes shall be charged to this fund; except, that receipts from the special tax levy for roads and bridges shall be kept in a special fund and expenditures for roads and bridges may be charged to the special fund. All receipts from the sale of bonds for any purpose shall be credited to the bond fund created for the purpose, and all expenditures for this purpose shall be charged to the fund. All receipts for the retirement of any bond issue shall be credited to a retirement fund for the issue, and all payments to retire the issue shall be charged to the fund. All receipts for interest on outstanding bonds and all premiums and accrued interest on bonds sold shall be credited to the interest fund, and all payments of interest on the bonds shall be charged to the interest fund. The county court may create other funds as are necessary from time to time." (Emphasis supplied)

The section, supra, contains the following:

". . . The budget shall contain adequate provisions for . . . the repair and upkeep of bridges other than on state highways and not in any special road districts, . . ."

Thus, we conclude that the "cart funds" can be utilized for the repair and upkeep of bridges except bridges in special road districts. There is no other limitation on the use of the "cart funds" except that such funds must be used for the constitutionally authorized purposes (supra).

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Our search of the laws of Missouri has revealed no other statutes expressly directing where or how the counties' portion of the money is to be expended. Therefore, the money appropriated to the counties shall be expended by the counties according to the Rules and Regulations of the State Highway Commission, under the control and supervision of the county court as provided in the above constitutional provision, and the laws governing the expenditure of ordinary revenue on roads and bridges. Section 2 of the Rules and Regulations of the State Highway Department reads as follows:

"All money in the County Aid Road Trust Fund shall be expended for the construction, reconstruction, repair, and maintenance of roads and bridges in the County Road System as hereinafter provided."

Subsection (b) of Section 3 of the Rules and Regulations defines County Road System as:

". . . all public roads or highways in the county not under the jurisdiction or control of the State Highway Commission or any city, town, or village with a population of more than 200 persons according to the last official census."

Under these Regulations, "cart funds" may be used for the construction, reconstruction, repair and maintenance of all roads in the county except roads not under the jurisdiction and control of the State Highway Commission and any incorporated city, town or village with a population of more than 200 persons.

It is our opinion that under our Constitution and the Rules and Regulations of the State Highway Department "cart funds" may be used on roads in a special road district.

We note that Section 233.115, RSMo 1969, authorizes the county court to construct or repair bridges or appropriate money to aid commissioners of an "eight mile" special road district to repair bridges utilizing funds "available" to it [the county court] for that purpose. It is our view that this limitation means funds that are legally "available" to be used in the road district. It is our view that "cart funds" are not legally "available" for use on bridges in "eight mile" special road districts notwithstanding the provisions of Section 233.115, supra, because of the prohibition in Section 50.550 of expenditures for bridges in special road districts.

We assume from your second question you want to know whether a county court can be forced or compelled to use some of the cart funds in a special road district if they refuse to do so.

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We answer your second question in the negative. The expenditure of the cart funds rests in the discretion of the county court and such court cannot be compelled to act in any specific manner by mandamus (State ex rel. Burke v. Ross, 420 S.W.2d 365 (Spr.Ct. App. 1967)) or other legal action.

CONCLUSION

It is the opinion of this office that:

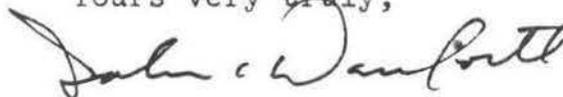
(1) County Aid Road Trust Funds derived from motor fuel taxes may be expended by a county court on roads located in a special road district.

(2) Such funds may not be expended by the county court on bridges located in a special road district.

(3) A county court cannot be compelled to spend such funds in a special road district.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Richard C. Ashby.

Yours very truly,



JOHN C. DANFORTH
Attorney General