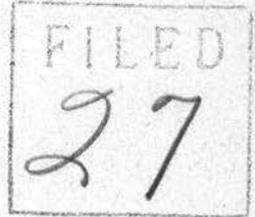


ROADS AND BRIDGES: General road district in county under township organization may contribute funds to county court for construction of bridge over stream dividing township from another township within same county.



December 11, 1948

Honorable C. E. Ernst  
Prosecuting Attorney  
Gentry County  
Albany, Missouri

12-22

Dear Sir:

We have received your request for an opinion of this department, which request is as follows:

"During this year an election was held in Athens Township in Gentry County, Missouri to vote a thirty-five cent additional levy for roads and bridge purposes. The proposition carried and the tax money accruing to the township as a result of this additional levy is estimated at about Nine Thousand Dollars.

"The Township Board has requested that I write to you for an opinion as to whether or not, they can use Four Thousand Dollars of this tax money as a contribution to the construction of a bridge across Grand River which is a dividing line between Athens and Cooper Townships. As I understand it Cooper Township is making no contribution toward the construction of this bridge."

Section 12 of Article X, Missouri Constitution of 1945, authorizes a special election in general or special road districts to levy an additional tax not to exceed thirty-five cents on each one-hundred dollars assessed valuation of real and tangible personal property within the district, the proceeds of such tax, when authorized, to be placed to the credit of the road district authorizing the levy.

Gentry County is a county of the third class and has adopted township organization. The powers and duties of township directors relative to roads and bridges in counties having township organization are set out in Art. 17, Ch. 46, R. S.

Mo. 1939 (Sections 8813-8835).

The only provisions in that article dealing with the construction of bridges are Sections 8824 and 8825. Section 8824 imposes upon the township board of directors the duty of constructing all bridges in their districts costing less than \$100.00.

Section 8825 provides as follows:

"Whenever it shall be necessary in any township to build a bridge, the cost of which shall exceed one hundred dollars, the township board of directors shall make out and cause to be presented to the county court a certified statement of the amount of money necessary for the construction thereof, and, if deemed proper, the said county court shall cause the bridge to be built by contract as provided by law."

The article is silent on the matter of whether the county court or the township board shall bear the cost of bridges in excess of \$100.00. The general law relating to the construction of bridges (Art. IV, Ch. 45, R. S. Mo. 1939) sheds no light on the question.

Section 8534 provides that no road district shall be compelled to build a bridge which costs \$50.00 or more. The use of such language would appear not to preclude a road district's voluntarily constructing a bridge costing in excess of that amount.

There is no prohibition against the use of the fund in question for the purpose suggested. We wish to point out that the fund is not raised by the township directors acting on behalf of the township as such, but, rather, is imposed on behalf of the general road district formed as required by Section 8014 R. S. Mo. 1939. As was pointed out by the Supreme Court in the case of State ex rel. Moore v. Wabash Railway Co., 208 S.W.(2d) 223, the additional thirty-five cent tax which is the source of the fund here in question may be levied only by a road district and may not be levied by a township as such, in the absence of the formation of a general road district.

Section 12 of Article X of the Missouri Constitution of 1945 and the laws enacted pursuant thereto (Laws 1945, page 1478) make no specific provision for the expenditure of the funds resulting from such levy, the section merely providing that taxes collected shall be "placed to the credit of the road district authorizing such public levy."

In the absence of any statutory prohibition against the use of the money for the purpose in question we do not feel that such use would constitute a misappropriation of the fund by the township directors. Certainly the bridge in question will result in benefit to the residents of the township in which the tax has been levied. In the absence of such contribution the county court may well be in no position to undertake the construction and the residents of the township would be harmed thereby although there were more than sufficient funds in the hands of the general road district to provide for the construction. There might appear to be some inequity in the present situation inasmuch as Cooper township, which may be equally benefitted by the construction, is making no contribution toward the construction. That alone, however, would not seem to cause the expenditure by the Athens township directors to be a misappropriation if they see fit to voluntarily contribute funds on behalf of that township.

CONCLUSION

Therefore, we are of the opinion that a general road district, in a county having township organization, which has imposed the additional tax authorized by Section 12, Article X, Mo. Constitution 1945, may contribute funds raised by such additional tax to the county court for the construction of a bridge over a stream which separates the township in which the additional tax has been imposed from another township within the same county.

Respectfully submitted,

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APPROVED:

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RRW:mw