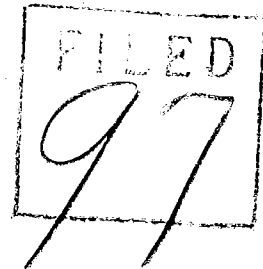


ROAD DISTRICTS: Special Road District may make
levy under Section 8067 R. S.
Missouri, 1929, for repairing
Roads & Bridges: roads in the district and may
also purchase rock crusher, to
crush rock to be used in re-
pairing said roads.

February 7, 1941

2-13

Hon. R. P. C. Wilson, III
Prosecuting Attorney
Platte County
Platte City, Missouri



Dear Sir:

This will acknowledge receipt of your letter
under date of January 17, 1941, requesting the follow-
ing opinion:

"In our County, the Parkville Benefit
Assessment Special Road District Com-
missioners desire to levy a tax on
the property in the district for the
purpose of raising money for rock
crusher operation, the rock to be used
on the roads in the district.

"Is it necessary for the Board of
Commissioners to call a special elec-
tion to vote on the levy, or may the
Board, under Section 8067 R.S. Mo.
1929, simply levy general taxes on
the property taxable in the district?"

We are enclosing a copy of an opinion rendered
by this department, under date of March 7, 1939, to
Hon. F. M. Brady, Prosecuting Attorney, Benton County,

Hon. R. P. C. Wilson, III

(2) February 7, 1941

Missouri, which the writer believes will answer your request. The enclosed opinion holds that it does not require a vote of the people to levy a tax under Section 8067 R. S. Missouri, 1929. However, the opinion goes further by holding that the Commission, under Section 8067, supra, cannot levy for construction of roads.

The writer assumes by the above use of the word "construction" it is meant to build a new road and not merely maintain or repair the roads in the district.

In Article 10, Chapter 42, Section 8065 R. S. Missouri, 1929, under Special Road Districts, we find the Commission is required to keep all such roads, bridges and culverts in good condition, and for such purposes may rent, lease or buy teams, implements, tools and machinery, all kinds of motor power and all things needed to carry on such work. This Section reads in part as follows:

"Said commissioners * * * shall have all the power, rights and authority conferred by law upon road overseers, and shall at all times keep such roads, bridges and culverts in as good condition as the means at their command will permit, and for such purpose may employ hands and teams at such compensation as they shall agree upon; rent, lease or buy teams, implements, tools and machinery; all kinds of motor power, and all things needed to carry on such work: Provided, that said commissioners may have such road work, or bridge or culvert work, or any part thereof, done by contract, under such regulations as said commissioners may prescribe."

Section 8067 R. S. Missouri, 1929, among other things provides that the board of commissioners shall

have the power to levy for working, repairing and dragging roads in the district. Section 8067, supra, reads in part as follows:

"The board of commissioners of any district so incorporated shall have power to levy, for the construction and maintenance of bridges and culverts in the district, and working, repairing and dragging roads in the district, * * *

In *Barber Asphalt Pav. Co. v. Hezel*, 155 Mo. 391, l. c. 399, the Court defined the words "maintain" and "repair" as used in statutes pertaining to maintenance and repair of streets, in the following manner:

"The word "maintain" does not mean to provide or construct, but means to keep up; to keep from change; to preserve (*Worcester Dict.*); to hold or keep in any particular state or condition; to keep up (*Webster Dict.*).

'In *Moon v. Durden*, 2 Exch. 21, it was said: "The verb 'to maintain,'..... signifies to support what has already been brought into existence." See, also, *Railroad v. Godman*, 4 N. E. Rep. (Ind.) 163.

"To repair" means to restore to a sound or good state after decay, injury, dilapidation or partial destruction. (*Webster; Street Railway, etc., Co. v. Galveston*, 69 Tex. loc. cit. 663. See, also, *Railroad v. Pittsburg*, 80 Pa. St. loc. cit. 76.)

February 7, 1941

"It will thus be seen that "maintenance" and "repair" when applied to a street practically mean one and the same thing."

In Boston & M. R. R. v. County Commissioners, 133 N. E. 67,68, the Court said:

"It should require no authority to show that the word 'maintain' includes the word 'repair'."

Also, in Fuche v. City of Cedar Rapids, 139 N. W. 903, 904, the Court held:

"To 'repair' presupposes the existence of the thing to be repaired; thus we say the thing needs repairing; the thing is out of repair; and so, when we speak of repairs, we assume that the thing to be repaired is in existence, and the word 'repair' contemplates an existing structure or thing which has become imperfect by reason of the action of the elements, or otherwise; and, when we repair, we restore to a sound or good state, after decay, waste, injury, or partial destruction, the existing structure or thing which needs to be restored to its original condition, or, in other words, we supply, in the original existing structure, that which is lost or destroyed, and thereby restore it to the condition in which it originally existed, as near as may be."

Hon. R. P. C. Wilson, III (5) February 7, 1941

CONCLUSION.

Therefore, it is the opinion of this department that the board of commissioners may make a levy under authority granted in Section 8067, supra, to repair roads in the district, and, in this connection we are of the opinion the commission may levy for the purchase of a rock crusher, when same is to be used to crush rock which will be used in the repair of said roads in the district.

Respectfully submitted,

AUBREY R. HAMMETT, JR.
Assistant Attorney General

APPROVED:

COVELL R. HEWITT
(ACTING) ATTORNEY GENERAL.

ARH, Jr. :RW