

SPECIAL ROAD DISTRICTS: May demand taxes derived from property within district immediately after formation is completed, but cannot receive taxes for fiscal year prior to formation.

April 6, 1936.

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72

Honorable Thomas V. Proctor,  
Prosecuting Attorney,  
Monroe County,  
Paris, Mo.

Dear Mr. Proctor:

This department is in receipt of your letter of recent date requesting an opinion, as follows:

"On the 2nd of March, 1936, the voters of the village of Holliday and surrounding vicinity voted to have a special Road District as is provided in Article 9, Chapter 42, R.S. 1929. The said district is 5 miles square and is to be known as the Holliday Special Road District. Since the adoption of the said District, the following question has been confronting us, and we would like to have an opinion from your department concerning same.

"Section 8042 of the above chapter provides that all taxes collected within the bounds of a district, for road and bridge purposes, shall upon proper demand be paid over to the Commissioners of the said District to maintain the roads and bridges in such district. The question now involved is when this money shall be turned over and what money shall be turned over to them. I mean by this, shall only that portion of taxes that has been collected after March 2nd be set aside to their credit, or are they entitled to the money and taxes that have been collected for this year prior to March 2nd, 1936? \* \* \* \* "

Section 8042, R.S. Mo. 1929, referred to in your letter, is as follows:

"In all counties in this state where a special road district, or districts, has or have been organized, or where a special road district, or districts, may be organized under this article, and where money shall be collected as county taxes for road purposes, or for road and bridge purposes, by virtue of any existing law or laws, or subsequent law or laws that may be enacted, upon property within such special district, or districts, or where money shall be collected for pool or billiard table licenses, upon business within such special road district, or districts, the county court shall, as such taxes or licenses are paid and collected, apportion and set aside to the credit of such special road district, or districts, from which said taxes were collected, all such taxes so arising from and collected and paid upon any property lying and being within such special district, or districts, and also, one-half of the amount collected for pool and billiard table licenses, so collected from such business carried on or conducted within the limits of such special road district; and the county court shall, upon written application by said commissioners of such special road district, or districts, draw warrants upon the county treasurer, payable to the commissioners of such special road district, or districts, or the treasury thereof, for all that part or portion of said taxes so collected upon property lying and being within such special road district, or districts, and also for one-half the amount so collected for pool and billiard table licenses, so collected from such business carried on or conducted

within the limits of such special road district, or districts."

The question is - can the Holliday Special Road District receive all county taxes levied and collected in said district for road and bridge purposes for the remainder of the year beginning March 2, or is it entitled to receive all moneys collected as provided in Sec. 8042, supra, from January 1, 1936?

Although the section states definitely that the taxes, after the district is organized, shall be paid to the commissioners of the special road district, we are not unmindful of the fact that a part of such taxes have been levied the year previous. In this case the County Court of Monroe County made the levy in May of 1935, the assessment being made in June of that year. Naturally, we would conclude that the levy and assessment accrued before the Special Road District came into existence; hence, the question would arise as to whether or not the district could receive any of the taxes under the levy and assessment of 1935, or any delinquent taxes of prior years. If not, then the Special Road District could not begin receiving taxes until after the levy in May, 1936.

In view of the plain wording of the statute, which states that special road districts are to receive all taxes collected after the formation of the district, and the case of State ex rel. v. Burton, 266 Mo. 711, we are of the opinion that, regardless of when the levy and assessment was made, the district begins receiving the taxes immediately upon the completion of the formation of the district. In the Burton Case, the Court said (l.c. 716):

"Upon a hearing on the application for the writ of mandamus the circuit court found that defendants had issued warrants in said district for \$3303.90 for work done therein, and it was ordered that they pay or issue warrants to plaintiff in the sum of \$6030.70, or the balance remaining in the county treasury which had been collected in said district under the twenty-five cent levy.

"Cross appeals were perfected from this judgment, plaintiff contending that it was entitled to the entire revenue collected in said district for the preceding year for road and bridge purposes, and defendants that the statute under which the levy was made was unconstitutional and hence void."

The Court, in discussing the above question, does not discuss our question definitely, but the above quotation contains the finding of the trial court. You will note that the county court had already paid out \$3303.90; the trial court held that the sum of \$6030.70 should be paid to the commissioners of the special road district. The Supreme Court affirmed this finding of the trial court; therefore, we conclude that it is proper for the district to receive the taxes immediately after its formation, but it cannot receive taxes levied on property in the district prior to its formation.

In the case of State ex rel. Special Road District v. Barry County, 302 Mo. 279, the court held that a special road district is entitled to receive all moneys collected as taxes upon timely application therefor. The Court said (l.c. 290-291):

"There was no further expression of the legislative mind with respect to these road-tax provisions until 1917. In that year the road law was recast in part. Sections 10481 and 10482 as amended by the Act of 1913 were repealed and what are now Sections 10682 and 10683 covering the same subject-matter were enacted. Section 10594 was in no way referred to in the repealing act. It was therefore not expressly repealed, and there is no ground for holding that it was repealed by implication. As already stated, it was carried into the present revision as Section 10818. The three sections (10682, 10683 and 10818) as they now stand do not indicate any change of the legislative purpose with respect to the distribution of road and bridge taxes collected upon property within special road districts. Section 10683 provides that all that part of the special road and bridge tax which shall be collected and paid upon property lying within any road district shall when paid into the county treasury be placed to the credit of the district from which it arose. Section 10682, which directs the levy of a road and bridge tax in connection with the general levy for county purposes, makes no provision for its distribution. But Section 10818,

voicing the legislative purpose with respect to special road districts, provides that all money collected 'as county taxes for road purposes, or for road and bridge purposes, by virtue of any... law' upon property within a special road district, shall be set aside to the credit of such special road district. The conclusion that a special road district is entitled upon timely application therefor to receive all moneys collected as taxes for road and bridge purposes upon property within its boundaries is unavoidable."

We are further guided in our conclusion that the special road district can only receive taxes after its formation -- not for any part of the fiscal year prior to its formation--by the general construction of the statute. Section 8042, supra, uses the words "shall be collected".

In the case of *Minter v. Bradstreet Co.*, 174 Mo. 444, the Court said: (Syllabi 8)

"The word 'shall' used in statutes ordinarily applies to something to be done or to take place in the future."

In the case of *State ex rel. St. Joseph Lead Co. v. Jones*, 270 Mo. 230, the Court said (Syllabi 2):

"A statute general in terms may be made to apply to conditions non-existent at the time of its enactment. If expressed in words of the present tense, it will generally be construed to apply not only to things and conditions existing at its passage, but will also be given a prospective interpretation and applied to such as come into existence thereafter."

In the early case of State ex rel. Parker v. Thompson, 41 Mo. 25, it was held:

"It is a well settled rule for the construction of statutory law that every act of the Legislature must be held to be prospective in its operation unless a different effect is clearly to be gathered from its terms."

In the case of Supreme Council Royal Arcanum v. Heitzman, 140 Mo. App. 105, the court held:

"Statutes will be considered to have a prospective operation only unless an intent to the contrary is expressed by or implied from the language used; especially where to construe the Act as retroactive would render it unconstitutional."

#### CONCLUSION

In view of the wording of Section 8042, supra, there is no language used to indicate that a special road district such as the Holliday Special Road District can demand of the county court any taxes accruing prior to the formation of the district, and in view of the decision in the Burton Case, we are of the opinion that the Holliday Special Road District may only begin demanding or receiving taxes due the district after the date of its formation. To hold otherwise would make section 8042, supra, retroactive and the question of constitutionality might arise.

Respectfully submitted,

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Assistant Attorney General.

APPROVED:

JOHN W. HOFFMAN, Jr.,  
(Acting) Attorney General.

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