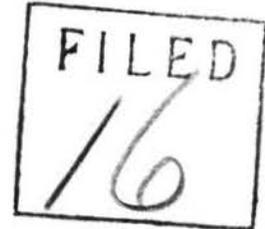


TAXATION: County court must make a levy under Section 7890, R. S. Mo. 1929. Moneys derived from levy under said section should not be placed in the budget but should be disbursed according to the terms of the statute.

May 18, 1938



Honorable Richard Chamier
Prosecuting Attorney
Randolph County
Moberly, Missouri

Dear Sir:

This Department is in receipt of your letter of May 3d, wherein you request an opinion embodying the following facts:

"Section 7890, Revised Statutes of Missouri, 1929, requires counties of the size of Randolph County to levy at the May Term of the County Court, for the credit of the 'County Road and Bridge Fund' a levy not to exceed 20¢ per \$100.00 as a road tax.

"The budget law starting at page 340 of the Session Acts of 1933 provides that the County shall estimate the amount of money needed for various purposes and pass a levy sufficient to provide such fund. In this county the money needed for the county road work is included in the general levy.

"The County Court has asked that you advise whether or not it is necessary to follow the mandatory provision of Section 7890 after the budget law has been passed. If it is not necessary they propose to raise all funds necessary for county road work from the general levy and propose to not levy under the provisions of Section 7890.

Please advise them whether or not they must make this levy.

"If they must levy under Section 7890 the County Clerk desires to know whether he must maintain a 'County Road and Bridge Fund'; or whether the money raised by this levy should be distributed as county monies are required to be distributed by the budget law.

"It is the understanding of our County Court that Section 7891, Revised Statutes of Missouri, 1929, can be used to raise funds for the special road districts."

It is well to bear in mind the provisions of Section 7890, R. S. No. 1929, mentioned in your letter, and same is herewith quoted in full as follows:

"The county courts in the several counties of this state, having a population of less than two hundred and fifty thousand inhabitants, at the May term thereof in each year, shall levy upon all real and personal property made taxable by law a tax of not more than twenty cents on the one hundred dollars valuation as a road tax, which levy shall be collected and paid into the county treasury as other revenue, and shall be placed to the credit of the 'county road and bridge fund.'"

The effect of the Budget Act has often been construed by this Department as not the complete repeal of the financial structure of a county but more for the purpose of promoting economy and efficiency in county government, and the Act has further been construed as repealing only such sections as are in direct conflict with it and cannot be harmonized with the spirit and purpose of the Budget Act. Section 22, Laws of Missouri, 1933, page 351.

Carefully construing the terms of Section 7890, supra, we cannot construe such terms to be in conflict with the terms of the Budget Act, but the effect of both the act and the section in carrying out the terms must be considered, and the questions are to the effect: (a) As to whether or not the county court must make a levy under Section 7890; and (b) if the county court makes the levy in accordance with the terms of Section 7890 are such funds so raised by the levy to be distributed in conformity with the terms of the Budget Act?

Under the general powers of the county court, given by the Constitution, Section 11 of Article X, the Legislature enacted Section 7890, quoted supra, as a part of the road taxing scheme. State ex rel. Kersey v. Land Cooperage Co., 317 Mo. l. c. 45. We think that the statute is mandatory in its terms and has been so declared by the decision of State to the Use of Covington v. Wabash Ry. Co., 319 Mo. l. c. 305, as follows:

"The prototype of this section was enacted by Laws 1899, p. 340 (Sec. 9436, R. S. 1899), by which it was provided that county courts may levy a road tax of not less than five cents or more than twenty cents on the \$100 valuation, to be deducted from the levy made for county purposes. The statute has come on down as Section 19, page 743, Laws 1909; Section 10481, Revised Statutes 1909; Laws 1913, page 667; Section 36, page 457, Laws 1917; Section 10682, Revised Statutes 1919; and Laws 1921 (Ex. Sess.) p. 172. The law of 1909 dropped the five cent minimum imposed by the law of 1899, and also omitted the specific provision that the road tax be deducted from the levy made for county purposes. The 1913 law put back a minimum of ten cents, which was carried in the statute until stricken out by the amendment in 1921. Now there is no minimum requirement, but the section

during all this twenty years, nearly, has been regarded as a mandatory statute requiring the levy of a road tax within the limit (or limits) specified from time to time."

Therefore, it becomes the duty of the county court to make a levy of some nature under Section 7890. Of course, the amount is discretionary with the county court.

Our answer to your first question being in the affirmative, it becomes necessary to refer briefly to certain terms in the Budget Act to answer your second question.

In Section 1, Laws of Missouri, 1933, page 341, the act uses the following expressions:

"* * *Whenever the term revenue is used in this act it shall be understood and taken to mean the ordinary or general revenue to be used for the current expenses of the county as is provided by this act regardless of the source from which derived. * * * The receipts shall show the cash balance on hand as of January first and not obligated, also all revenue collected and an estimate of all revenue to be collected, also all moneys received or estimated to be received during the current year. * * *"

This would appear to include all forms of revenue which apparently would include the levy under Section 7890, as a levy under this section is considered a levy "for county purposes." State ex rel. v. Railroad, 319 Mo. 302.

But under Section 2, page 341, Laws of Missouri, 1933, the county court is directed to classify the expenditures in such a way as to preserve priority of each class. The first five classes are definite in their terms and set forth precisely the items which are to be classified. The only class which could be said by inference or reference to

include roads and bridges is Class 3, which is as follows:

"The county court shall next set aside and apportion the amount required, if any, for the upkeep, repair or replacement of bridges on other than state highways (and not in any special road district) which shall constitute the third obligation of the county."

However, this class refers to the upkeep, repair or replacement of bridges not on state highways or in special road districts. No provision is made for the upkeep or repair of roads. Class 6 merely attempts to provide for any excess money which the county court may have on hand after providing for the other five classes, and in order to have funds in this class it is necessary for the county to be solvent and not owing any outstanding warrants.

Thus, the situation resolves itself into the fact that the terms used in the first section of the Budget Act are broad enough to include funds derived under a levy provided for in Section 7890, but the Budget Act fails to offer any classification for such funds.

In view of the fact that the Budget Act in nowise provides for the use of funds derived under Section 7890 or the manner in which they shall be spent or classified, we are of the opinion that such funds do not come within the provisions of the Budget Act and as contained in Section 7890 they "shall be placed to the credit of the county road and bridge fund." And we are of the further opinion that they should be kept in said fund and expended independently of the Budget Act.

The last paragraph in your request is not sufficiently definite for us to determine the exact question. However, we assume that the county court desires to make an

additional levy under Section 7891, R. S. Mo. 1929, empowering said county court so to do for the purpose of raising funds only in a special road district, or can the county court use the funds levied by this section in a special road district?

In either event we think the statute is plain in the proviso therein contained, which is as follows:

"Provided, however, that all that part or portion of said tax which shall arise from and be collected and paid upon any property lying and being within any road district shall be paid into the county treasury and placed to the credit of the special road district, or other road district, from which it arose, and shall be paid out to the respective road districts upon warrants of the county court, in favor of the commissioners, treasurer or overseer of the district, as the case may be: "

Section 7891, supra, has been construed by the court in *State ex rel. v. Cooperage*, 317 Mo. 45, as not being a part of county levy, or, in other words, not a levy for current county expenditures.

Respectfully submitted

OLLIVER W. NOLEN
Assistant Attorney-General

APPROVED:

J. E. TAYLOR
(Acting) Attorney-General

OWN:EG