

TAXATION AND REVENUE: Uncollected taxes belonging to a district  
ROAD DISTRICTS: should go into the special road district  
to which such unorganized territory is  
attached.

December 20, 1939

Honorable Donald B. Dawson  
Prosecuting Attorney  
Bates County  
Butler, Missouri



Dear Sir:

This is in reply to yours of recent date wherein  
you submit the question as follows:

"I desire your opinion on a matter  
pertaining to the levy and collection  
of back taxes by a special road dis-  
trict in a township.

"Section 8180 Revised Statutes for  
1929 sets up that when a special  
road district is organized in a  
township it shall be entitled to  
receive taxes levied against prop-  
erty located within the special  
road district. Apparently under  
this section there is no doubt  
but what all taxes which are  
assessed and become due and pay-  
able after the organization of  
the special road district are payable  
to the road district, however, I  
desire your opinion as to the pay-  
ment of taxes which were assessed  
and levied prior to the organization  
of the special road district but  
which are not paid when due, become  
delinquent and are paid after the  
organization of the road district.

"Under the section cited above I

Honorable Donald B. Dawson (2)

December 20, 1939

am confident that it was the intention of the Legislature to provide that all taxes paid after the organization of the district are payable to the road district funds, regardless of when assessed, but that is a question that you must decide."

Section 8180, R. S. Missouri 1929, deals with special road districts in counties under township organization. It provides as follows:

"The township board of trustees shall, upon the organization of such commissioners, cause all tools and machinery used for working roads belonging to the districts and parts of district formerly existing and composed of territory embraced within the incorporated district to be delivered to said commissioners, for which such commissioners shall give receipt, and such commissioners shall keep and use such tools and machinery for constructing and improving public roads and bridges. The township boards shall also cause the township treasurer to pay over to the treasurer of the special road district all moneys in his hands belonging to the district or districts that have been merged into the special road district whenever the board of commissioners of such special road district shall make demand therefor. Said commissioners shall have sole, exclusive and entire control and jurisdiction over all public highways, bridges and culverts, within the district to construct, improve and repair such highways, bridges and culverts, and 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."

It seems by this section that it was the intention of the lawmakers that the newly organized territory shall be entitled to all of the assets of the old district. The commissioners of the new district have exclusive jurisdiction over the old district together with the new as reorganized. There does not seem to be any question but that the newly organized district would be entitled to receive the taxes levied against the property located within the special road district, which would include the territory which was added to the special road district.

In the case of *Abler v. School District*, 124 S. W. 564, the Court of Appeals said at l. c. 566:

"The only remaining question is whether the merger of the two districts annulled the execution of the contract sued on, leaving the district liable only for the value of services already performed under the contract at the time of the merger.

"It is said: 'Where performance

of a contract is dependent upon the continued existence of a person or thing, and such continued existence was assumed as the basis of the agreement, the death of the person or the destruction of the thing puts an end to the obligation.' (7A. and E. Ency. of Law, 116.) And so we find the law in *Mumma v. Potomac Co.*, 8 Peters 281; *Read v. Frankfort Bank*, 23 Me. 318; *People v. Glove Mutual Insurance Co.*, 91 N. Y. 174; and other cases. We have no doubt about the correctness of the principle and cannot see how it could be otherwise, but there is much room for difference of opinion in its application.

"We do not think the rule has any application to this case. The question has been decided by the Supreme Court in *Thompson v. Abbott*, 61 Mo. 176. It is there held that where one corporation goes entirely out of existence by being annexed to or merged in another, if no arrangements are made respecting the property and liabilities of the corporation that ceases to exist, the subsisting corporation will be entitled to all the property and answerable for all the liabilities.' This case was where under the statute a township school district became merged in an adjoining town for school purposes and the board of education of the municipality took possession and control of the school property of the annexed district."

Also, in *Gray v. School Dist. No. 73 of Clay County, et al.*, 28 S. W. (2d) 683, the Kansas City Court

Honorable Donald B. Dawson (5) December 20, 1939

of Appeals said, page 686:

"\* \* \* \* \* Defendants' school districts were organized not only from the territory in the consolidated district but with some unorganized adjacent school territory never in the consolidated district. However, this circumstance does not exonerate defendants from liability for the obligations of the consolidated district properly entered into. \* \* \* \* "

Under said Section 8180 it seems that it was the intention of the lawmakers that when the special road district is organized that the district take over all the assets of the old territory and assume all obligations. We think that the delinquent taxes of the old territory would be considered as assets of that territory.

In the case of State ex rel. Road District v. Burton, 283 Mo. 41, the Supreme Court held that road funds which are collected in special road districts must be turned over to the district in which they are collected, therefore, the delinquent taxes collected in the territory which is incorporated in the newly organized district would come along with other properties belonging to that territory.

#### CONCLUSION.

From the foregoing it is the opinion of this department that delinquent taxes on property which is incorporated in a special road district should, when collected, be paid into the treasury of the newly organized special road district.

Respectfully submitted

APPROVED:

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