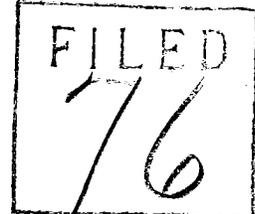


SPECIAL ROAD DISTRICTS: Cannot use funds derived from special road tax to pay bonded indebtedness.

February 12, 1941

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Honorable Marion Robertson
Prosecuting Attorney
Saline County
Marshall, Missouri



Dear Sir:

Receipt of your letter of January 2, 1941, asking for an opinion as follows:

"This inquiry is made at the instance of the Commissioners of the Sweet Springs Special Road District of Saline County, Missouri.

"In addition to the 20¢ levy made by the county, which goes to the General Fund of the Sweet Springs Special Road District, the road district has also issued and sold bonds for gravelling of roads within the district, and for that purpose have made a 25¢ levy which is paid into the interest and sinking fund of the district, and is sufficient for the purpose of retiring bonds and interest as they become due.

"There is however, a surplus of approximately \$6,000.00 in the General Fund, which is created by the 20¢ levy.

"The question the Commissioners would like for you to decide, is whether or not they can transfer the \$6,000.00 surplus or any part thereof not needed for maintenance of the highway, to the interest and sinking fund, so that they may reduce the levy of 25¢ for the retirement of bonds and interest. In other words, may a Special Road District use General Fund money for retirement of bonds, and at the same time reduce the levy for interest and sinking fund?"

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was acknowledged in our letter of January 20th, in which information was requested concerning the matters referred to in the above letter, concerning which the opinion was asked.

Under date of January 29, 1941, you replied as follows:

"In reply to your letter of January 20, 1941, as to what Article of the statutes this road district was organized, I am informed that it was Article 9, Chapter 42, R. S. Mo. 1929, beginning at Section 8024; that the Special levy of 20% that the County Court made was authorized by Section 7891, R. S. Mo. 1929, and that the original bonded indebtedness which the district voted, was authorized by Sections 7961 and Section 7962."

You state that a 20% tax was levied in accordance with the authority contained in Section 7891 R. S. Mo. 1929. This Section was enacted under authority of Section 22 of Article X of the Constitution. These sections of the Constitution and Statutes are as follows:

Section 22 of Article X of the Constitution:

"In addition to taxes authorized to be levied for county purposes under and by virtue of section 11, article X of the Constitution of this State, the county court in the several counties of this State not under township organization, and the township board of directors in the several counties under township organization, may, in their discretion, levy and collect, in the same manner as State and county taxes are collected, a special tax not exceeding twenty-five cents on each \$100 valuation, to be used for road and bridge purposes, but for no other purpose whatever; and the power hereby given said county courts and township boards is declared to be a discretionary power."

Also Section 7891 R. S. Mo. 1929:

"In addition to the levy authorized by the preceding section, the county courts of the

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counties of this state, other than those under township organization, in their discretion may levy and collect a special tax not exceeding twenty-five cents on each one hundred dollars valuation, to be used for road and bridge purposes, but for no other purposes whatever, and the same shall be known and designated as 'the special road and bridge fund' of the county: 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: Provided, further, that the part of said special road and bridge tax arising from and paid upon property not situated in any road district, special or otherwise, shall be placed to the credit of the 'county road and bridge fund' and be used in the construction and maintenance of roads, and may, in the discretion of the county court, be used in improving or repairing any street in any incorporated city or village in the county, if said street shall form a part of a continuous highway of said county leading through such city or village; but no part of said fund shall be used to pay the damages incident to, or costs of, establishing any road: Provided further, that no warrant shall be drawn in favor of any road overseer until an account for work done or materials furnished shall have been presented and audited by the county court."

It will be observed that Section 22 of Article X of the Constitution, and Section 7891 R. S. Mo. 1929, both direct that the funds derived on the levy of this special road tax shall be used for road and bridge purposes, and for no other purpose.

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Vol. 61 C. J. paragraph 2 of section 2235, at page 1521:

"Taxes which are set apart by the constitution of the state for particular uses cannot be diverted by the legislature to any other purpose, and neither can funds derived from taxes levied and collected for particular purposes be legally utilized for, or diverted to, any other purpose, some constitutional provisions expressly so providing."

Inasmuch as funds derived through the levy of this special road tax can be used for no other purpose, it remains to be determined whether or not the applying of such funds can be reverted to the payment of bonded indebtedness.

In the case of Newport v. McLane 77 S. W. (2d), page 27, 96 A.L.R. 655, is found the following definitions of divert and diversion:

"We shall hereafter use the term 'divert,' or 'diversion' in the sense of turning money belonging to one fund, permanently, from its purpose or the final appropriation of it, to some other use of the city. Gates v. Sweitzer, 347 Ill. 383, 179 N. E. 837, 79 A.L.R.1151."

This was a case in which suit was brought against certain city officers, because they had transferred funds from a sinking fund created for the purpose of paying a bonded indebtedness to other funds, and the court further said at l. c. 660:

"The courts, indeed all authorities, seemingly without an exception agree that when a tax is levied, whether by a fiscal court, city council, or a board of commissioners of a city, or trustees of a town, or other legislative body, by a resolution, ordinance, or other legislative procedure, specifying distinctly the purpose for which it is levied, the legislative body making the levy, after the tax shall have been collected, does not thereafter have any legislative authority over it for the purpose of diverting is so long as the purpose for which it was collected exists. A fortiori those ad-

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ministrative officials into whose custody and control the law intrusts the same with the authority to invest, preserve, or pay it out are without authority to divert it."

The special road tax was levied and collected for road and bridge purposes only, and when in the county treasury, it is required to be kept in a separate account. The funds raised by the levy to pay the bond issue must be similarly treated. Also the funds derived from the bond issue could be used for the purpose of purchasing right-of-way for the construction of new roads, which is a use not permitted of funds derived from the special road tax. It can hardly be said that the payment of a pre-existing debt, even when incurred for the construction of roads, would be road and bridge purposes within the meaning of Section 22, Article X of the Constitution, and Section 7891 R. S. Mo. 1929.

Your letter also states that the Sweet Springs Special Road District was organized in accordance with Article IX of Chapter 42, R. S. Mo. 1929. This Article contains Section 8047, which is as follows:

"The fund received from the poll and road tax of said district shall constitute a general district road fund, and shall be disbursed only as hereinbefore provided, and shall be used only for working, repairing and improving the public roads of such district as herein provided, and for no other purpose; and no part thereof shall be used for paying damages and costs for opening new roads, but all such damages and costs for opening new roads paid by the county shall be paid out of the other county revenue, except as this article may otherwise provide."

CONCLUSION.

The conclusion is reached that no funds derived from the levy and collection of the special road tax authorized by Section 22 of Article X of the Constitution

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and Section 7891 R. S. Mo. 1929, can be applied to the payment of a bonded indebtedness.

Respectfully submitted,

W. C. JACKSON
Assistant Attorney General.

APPROVED:

COVELL R. HEWITT
(Acting) Attorney General.

WOJ/me