

ROADS AND BRIDGES:  
TOWNSHIP ORGANIZATION:  
TAXATION:  
SPECIAL ROAD DISTRICTS:

Properties in special road districts in counties under township organization are liable for taxes assessed and levied to pay such bonds, provided such special road districts did not have bond obligations at the time the Township bond obligation is incurred.  
January 16, 1942

Hon. Charles S. Greenwood  
Prosecuting Attorney  
Chillicothe, Missouri

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Dear Mr. Greenwood:

This is in reply to your letter of recent date wherein you request from this department an opinion on whether or not the properties in special road districts, which are within bounds of a township in a county under township organization, are liable for taxes for the payment of such bonds.

The authority by which township road bonds are issued is derived from Section 8609 and 8610, R. S. Mo. 1939. These sections provide in part as follows:

"Sec. 8609. The board of commissioners of any special road district organized and incorporated under the laws of this state, for and on behalf of such district, and the county courts of the several counties, on behalf of any township in their respective counties, are hereby authorized to issue road bonds to an amount, including existing indebtedness, not exceeding five per centum of the assessed valuation of such special road district or township, as the case may be, \* \* \* \* \*"

"Sec. 8610. \* \* \* \* and whenever twenty legal voters of any township shall file with the clerk of the county court wherein the township is located a petition in writing asking that bonds for road purposes be issued for and on behalf of such township, it shall be the duty of the court to order an election to be held in such township upon the question of issuing bonds. \* \* \* \* \* If it shall appear that two-thirds of the voters voting at such election on said question

shall have voted in favor of the issuance of said bonds, the board of commissioners of the special road district, or the county court, as the case may be, shall order and direct the execution of the bonds for and on behalf of such special road district or township, and shall provide for the levy and collection of a direct annual tax upon all the taxable property in said district or township sufficient to provide for the payment of the principal and interest of the bonds so authorized as they respectively become due. \* \* \* \*

\* \* \* \* \*  
 At the time the county court is required to determine and levy the rate of taxation for state, county, school and other taxes, to determine, order and levy such a rate of taxation upon the taxable property in any township in such county as may have outstanding bonds issued under this section as will be sufficient to pay interest and principal falling due during the next succeeding year. It shall be the duty of the clerk of the court to extend upon the tax books of the county such rate of taxation upon and against all of the taxable property in such township, and when so extended the same shall be collected by the collector of the revenue at the time, in the manner, and by the means that state, county, school and other taxes are collected. \* \* \* \* \*

By the provisions of these sections a system is set up whereby the county court, for the use and benefit of a township, may issue bonds for road purposes. It will be noted that only the taxable property in such township is liable for the payment of these taxes. In the case of *Sherlock v. Duck Creek Township*, 92 S. W. 675, 678, the Supreme Court, in discussing the relationship of the county court to such bond issue transactions, the court said:

"It is apparent that the bonds thus issued were issued for and on behalf of the

township, at its behest, and for its benefit. They are to all intents and purposes township bonds, township obligations, and the county court, in issuing them, was merely the agency used to affectuate the objects of the law and the purpose of the township in borrowing the money. \* \* \* \* \*

So, it will be seen from this opinion that the bonds issued by the county court for the township, under the authority of said Sections 8609 and 8610, were obligations of the townships.

From your request, it appears that some of the residents of the special road districts which are within the township that issued the bonds do not think that they are liable for these taxes, because none of the proceeds from the sale of the bonds are spent on the roads within the special road districts, wherein they reside. Under Section 8613, R. S. Missouri 1939, if a special road district is within a township and has outstanding bonds at the time the township incurs the bond obligation, then the county court would not be authorized to issue such bonds. Section 8613 reads in part as follows:

"The four next preceding sections, to wit: sections 8609, 8610, 8611 and 8612, shall not apply to any township, the whole or any part of which is included in a special road district that has issued bonds, the whole or any part of which are outstanding and unpaid; \* \* \* \* \*

The fact that none of the proceeds from the sale of the bonds were spent in the special road district would not be determinative of this question. You will find many instances in which road bonds are issued and the proceeds therefrom are not spent in every district obligated to pay the same. The place where public funds of a political sub-division are to be spent is generally within the discretion of the administrative board of such sub-division.

Under Section 3841, as amended in Laws of Missouri, 1941, page 523, the special road districts in townships in counties under township organization, are entitled to the taxes which are imposed on all the property in such district, by virtue of the road and bridge levy, as authorized by Section 3526, R. S. Mo. 1939. However, referring to Section 3621, it will be seen that the lawmakers have not permitted the special road and bridge taxes on such properties to be paid to the commissioners of the special road districts. We call your attention to Section 3527, R. S. Missouri 1939, which provides that the special road and bridge taxes in counties not under township organization, shall be paid to the special road district which contains the properties upon which the tax is imposed. We refer to these two sections in support of our view that it is entirely up to the lawmakers to determine where, and by whom, tax funds may be spent.

#### CONCLUSION

From the foregoing, it is the opinion of this department that taxes for the purpose of paying road and bridge bonds of a township in counties under township organization may be levied and collected on all properties in such township, including special road districts therein, providing such special road district did not, at the time of the issuance of said township bonds, have any outstanding bond obligations.

Respectfully submitted,

TYRE W. BURTON  
Assistant Attorney General

APPROVED:

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VANE C. THURLO  
(Acting) Attorney General

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