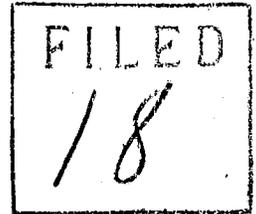


TAXATION AND REVENUE: Sec. 8527 of H.C.S.H.B. 784 of 63rd General Assembly held constitutional in so far as it directs return of portion of road and bridge tax to special road districts.

January 13, 1947



Honorable Joe W. Collins  
Prosecuting Attorney  
Cedar County  
Stockton, Missouri

Dear Sir:

Reference is made to your inquiry of recent date, requesting an official opinion of this office, and reading as follows:

"I am writing you for an opinion on the following:

"Our county is a 4th class one operated by the county court.

"Section 12a of Article X of the Constitution of Missouri provides in part that the county court may levy an additional tax, not exceeding 35¢ on each \$100 assessed valuation, all of such tax to be collected and turned in to the county treasury to be used for road and bridge purposes.

"Section 8527 of house bill 784 in part provides that the county court may levy an additional tax, not exceeding 35¢ on each \$100 assessed valuation, all of such tax to be collected and turned in to the county treasury, where it shall be known and designated as 'The Special Road and Bridge Fund' to be used for road and bridge purposes and for no other purpose whatever; 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 Special Road District shall be paid into the county treasury and 4/5th of such

part or portion of said tax so arising from and collected and paid upon any property lying and being within any such special road district shall be placed to the credit of such special road district from which it arose and shall be paid out to such special road district upon warrants of the county court in favor of the commissioner or treasurer of the district as the case may be.

"I would desire an opinion as to the validity of the proviso of said section of said house bill. May the county court keep the 35¢ levied as under the Constitution or must it turn over the 4/5ths as provided in the house bill. Our county court would like to know if the house bill is in conflict with the Constitution."

Section 12a of Article X of the Constitution of 1945, referred to in your letter, reads, in part, as follows:

"In addition to the rates authorized in section 11 for county purposes, the county court in the several counties not under township organization, the township board of directors in the counties under township organization, and the proper administrative body in counties adopting an alternative form of government, may levy an additional tax, not exceeding thirty-five cents on each hundred dollars assessed valuation, all of such tax to be collected and turned in to the county treasury to be used for road and bridge purposes. \* \* \*"

Section 8527 of H.C.S.H.E. No. 784 of the 63rd General Assembly, referred to in your letter, reads, in part, as follows:

"In addition to other levies authorized by law, the county court in counties not adopting an alternative form of government and the proper administrative body in counties adopting an alternative form of government, in their discretion may levy an additional tax, not exceeding thirty-five cents on each one hundred dollars assessed valuation, all of such tax to be collected and turned into the

county treasury, where it shall be known and designated as 'The Special Road and Bridge Fund' to be used for road and bridge purposes and for no other purpose whatever; 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 special road district shall be paid into the county treasury and four-fifths of such part or portion of said tax so arising from and collected and paid upon any property lying and being within any such special road district shall be placed to the credit of such special road district from which it arose and shall be paid out to such special road district upon warrants of the county court, in favor of the commissioners or treasurer of the district as the case may be; \* \* \* (Emphasis ours.)

The question, then, which your inquiry squarely presents is whether or not the statutory enactment of the 63rd General Assembly is in conflict with the quoted constitutional provision or is a valid exercise of legislative authority.

May we say, at the outset, that this section has not been the subject of any litigation, so far as we have been able to determine. Such being the case, a presumption of validity and constitutionality attends the legislative enactment until such time as it be held otherwise by a competent judicial tribunal. We quote from State ex rel. v. Southwestern Bell Tel. Co., 352 Mo. 715, l. c. 724, wherein the Supreme Court quoted approvingly the following from Barker v. St. Louis County, 340 Mo. 986, 104 S. W. (2d) 371:

"There is no better settled law in our state than the rule that courts will not hold a statute to be unconstitutional unless it contravenes the organic law in such a manner as to leave no doubt of its unconstitutionality" \* \* \*

We think that an analogous situation to that presented in your inquiry is found in several cases arising under the Constitution of 1875. Section 22 of Article X of the Constitution of 1875 read as follows:

"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."

For a portion of the period during which the Constitution of 1875 and the quoted constitutional provision was in effect, there existed Section 10482, R. S. No. 1909, as amended, Laws of 1913, page 669, reading, in part, as follows:

"Section 10482. Special road and bridge fund. -- In addition to the levy hereinbefore authorized to be made, the county courts of the several counties of this state, other than those 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 one hundred dollars valuation, to be used for road and bridge purposes, but for no other purpose whatever, and the same shall be known and designated as 'the special road and bridge fund' of the county: Provided, however, that in counties in this state in which a special road district exists, or shall exist, or where special road districts exist, or shall exist, as provided for by the laws of this state in article VI of chapter 102 of the Revised Statutes of Missouri, 1909, all that part or portion of said taxes herein mentioned and provided for which shall arise from and be collected and paid upon any property lying and being within such special road district, or districts, shall, by said county courts, be apportioned to such special road district, or districts, from which said tax was collected,

and shall, when collected, upon written application by the commissioners of such special road district, or districts, be paid to said commissioners of such special road district, or districts, by said county courts, by warrants drawn upon the county treasurer, payable to said commissioners, or the treasurer of said special road district, or districts; and all said sums of money so apportioned to said special road district, or districts, and so paid over to the commissioners thereof, or the treasurer thereof, shall be used and expended by said special road district, or districts, by the commissioners thereof, for road and bridge purposes, but for no other purpose whatever, and the county court shall apportion to all other road districts all taxes collected from property in such districts." (Emphasis ours.)

Subsequent to the enactment of this statute, the County Court of Randolph County refused to pay over to the Moberly Special Road District the funds derived from taxes on property located in such special road district. A mandamus action was brought to require such disbursement of the funds, the cause ultimately being decided by the Supreme Court of Missouri, in State ex rel. v. Burton et al., Judges, 266 No. 711. The following quotation from the opinion is, we think, germane to the question at hand:

"The constitutionality of section 10482, Revised Statutes 1909, as amended (Laws 1913, p. 669), providing for the apportionment by county courts of taxes collected for road purposes within certain special road districts, is assailed by defendants on various grounds. It is first contended that this statute violates section 22 of article 10 of the State Constitution. It will be recalled that this section provides in addition to taxes authorized to be levied for county purposes (under Sec. 11, art. 10, Constitution), that the county courts of the several counties, not under township organization, and the township board of directors in counties having township organization, may levy and collect as State and county taxes are collected, a special tax of not more than twenty-five-cents on each one

hundred dollars' valuation, to be used for roads and bridges, but for no other purpose whatever, and the power thus conferred on the county courts and township boards is declared to be discretionary.

"Three limitations, two express and one implied, say defendants, are found in this section; the first is as to the rate, the second as to the application of the tax when collected, and the third (which defendants say is implied) that the tax must be expended under the direction of the county court over the entire county.

"As to defendants' contention in regard to the first and second limitations, there is no question, the Constitution in this regard being express and unequivocal. As to the third, it may be conceded as a general proposition that under section 36 of article 6 of the State Constitution county courts are created for the transaction of county business and express jurisdiction is given them in this regard, but it must be borne in mind, despite this provision, that our organic law is not like the Federal Constitution, a grant of power, but is simply a limitation upon power which the Legislature otherwise possesses. (McGrew v. Railroad, 230 Mo. 496; State ex rel. v. Sheppard, 192 Mo. 497; State ex rel. v. Warner, 197 Mo. 650; Glasgow v. Rowse, 43 Mo. 479.) Broadly stated, therefore, the Legislature may enact any law which does not contravene the Federal or State Constitution, and in its interpretation, the courts will hold it valid unless its unconstitutionality is manifest and exists beyond a reasonable doubt. (State v. Buente, 256 Mo. 227; Board of Com. v. Peter, 253 Mo. l. c. 530; Harris v. Bond Co., 244 Mo. 664; State ex rel. v. County Court, 128 Mo. 427.) The admitted implied existence of the third limitation renders it necessary for same to be so clear and unmistakable as to leave no other reasonable construction than that insisted upon by defendants, otherwise their contention cannot be maintained. (Board of Com. v. Peter, 253 Mo. l. c. 530.)

"It is only upon the assumption that the entire business of the county must be conducted by the county court and that the Legislature cannot provide otherwise, that any basis can be found for defendants' contention as to the third limitation. No words in the section authorize it. Consequently it is not such a clear and unmistakable implication as would, under the rule, authorize an affirmative conclusion as to its existence in harmony with defendants' contention, but on the contrary, it is simply an inference. Constitutional provisions cannot be construed by inferences, especially when it is sought by such construction to render a legislative enactment invalid. In thus construing the section of the Constitution under consideration, we are not unmindful of the fact that it contains restrictive language, but the purpose of this language is unmistakable and is expressly limited to the amount of the levy on each \$100 valuation, and the purpose for which the tax is to be used, and not to the officials or body corporate by which it is to be expended. We are not impressed, therefore, with the soundness of defendants' reasoning in so construing section 22, article 10, of the Constitution, as to confine the disbursement of the taxes therein authorized to the county courts of the respective counties, the effect of which would be to render invalid section 10482, Revised Statutes 1909, as amended.

"A fitting supplement to what has been said, and one of the primary principles underlying the system of taxation, is the fact that the inherent power to tax and to appropriate taxes is vested in the Legislature (Art. 10, Constitution) and may be exercised within its discretion when not violative of an express provision of the Federal or State Constitution. (Hann. & St. J. R. Co. v. State Board, 64 Mo. 294.) The comprehensiveness of this power, in the absence of the restrictions indicated, extends to the determination of the time, the amount, the nature and the purpose for which the tax is to be levied. (In re Sanford, 236 Mo. 1. c. 684; 37 Cyc. 724, and cases.) The

legislative power to tax being inherent, the creation of agencies or instrumentalities for the levy, collection and disbursement of such taxes follows as a necessary consequence, and hence the right of the Legislature to enact a law delegating, in this case, the disbursement of the taxes collected to a board of commissioners of a special road district, is not an improper exercise of such power."  
(Emphasis ours.)

In view of the similarity found in the language incorporated in the constitutional and statutory provisions which were in effect at the time this case was decided, as compared with the language in the Constitution of 1945 and the statute now under consideration, we believe that a similar conclusion would be reached by the court. Further, we are cognizant of the statutes relating to the usage to be made of funds received by the commissioners of special road districts, such statutes requiring that the funds be expended for road and bridge purposes exclusively. Consequently, the tax, although raised on a county-wide basis, would yet be used for the public purposes for which the levy is authorized if placed in the hands of the commissioners of the various special road districts. Therefore, no diversion could take place in the use of the funds from the purpose for which they were raised. We, therefore, reach the conclusion that the enactment of Section 8527 of H.C.S.H.B. No. 784 of the 63rd General Assembly is not violative of the constitutional provision found as a part of Section 12a of Article X of the Constitution of 1945.

#### CONCLUSION

In the premises, we are of the opinion that Section 8527 of H.C.S.H.B. No. 784 of the 63rd General Assembly is constitutional, and that the county court must, in accordance with its provisions, place to the credit of each special road district found in its county the taxes arising upon the property found in each of such special road districts by virtue of the provisions of Section 12a of Article X of the Constitution of 1945 and Section 8527 of H.C.S.H.B. No. 784 of the 63rd General Assembly.

Respectfully submitted,

WILL F. BERRY, Jr.  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General

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