

(Opinion relating to taxes levied and collected on property in
special road districts.)

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100682 RS Mo 1919
Acc 8042 RS Mo 1929

October 5, 1933.

Mr. Joseph C. Crain,
Prosecuting Attorney Christian Co.,
Ozark, Missouri

Dear Sir:

This department acknowledges receipt of your letter under
date of September 30, 1933, in which you state and inquire as follows:

"On February 7, 1933, the county court of our county granted a petition organizing a special road district out of part of Road District #8. At the time of the granting of this petition, there was money on hand in the treasury of the Road District #8 in the amount of \$177.00. There was also a large amount of delinquent taxes due from members of the newly organized district and others remaining in district #8. Some of the delinquent taxes have been paid since the organization of the Special Road District. The Commissioners of the Special Road District and the Overseer of District #8 are having considerable dispute as to how the money is to be divided.

I would appreciate an opinion from your office on the following questions:

I. As to whether the newly organized Special District is entitled to any of the money on hand in the old district on February 7, 1933, and if so, what is to be the basis of division.

LL. Is the newly organized Special District entitled to the delinquent taxes paid in by members of their district after the date of organization which had been levied while they were in the old road district or is this money divided on some other basis or does it go to District #8 which is now only a part of the original #8."

Section 8055 R. S. 1929, reads in part as follows:

"If the majority of the votes cast for and against the adoption of this article be for its adoption, the court shall declare the result of the vote thereon by an order of record, and shall make an order of record declaring this article to be the law in such special road district, the same to take effect and be in force from and after a day to be named in such order within ten days."

State ex rel Special Road District v. Barry County, 302 Mo. 1.c.

291, reads in part as follows:

"Section 7891, R. S. 1929 provides that all that part of the special road and bridge tax which shall be collected and paid upon property lying within any road district shall when paid into the county treasury be placed to the credit of the district from which it arose.

Section 8042 R. S. 1929, voicing the legislative purpose with respect to special road districts, provides that all money collected 'as county taxes for road purposes, or for road and bridge purposes, by virtue of any law' upon property within a special road district, is entitled upon timely application therefor to receive all moneys collected as taxes for road and bridge purposes upon property within its boundaries is unavoidable. "

In case of State ex rel Special Road District v. Holman, 305 Mo.

1. c. 203, the court said:

"Relator contends that Section 10838, Revised Statutes 1919, which is part of the act under which relator was organized, and which was enacted in 1913, requires the taxes levied under Section 10682 to be carried to the credit of districts like relator in so far as those taxes are derived from property within such districts. Section 10838 provides, among other things, that the county courts 'shall levy on the property taxable in' districts organized 'such taxes as may be levied by the authority of Section 10682 in district not incorporated, and such taxes when so collected shall be set aside to and placed to the credit of the district in which the property was taxable. . . . All revenue so set aside and placed to the credit of such incorporated district shall be used by the commissioners thereof for' road work within the district. The argument of respondents, with relation to these statutes, is based upon the history of the legislation. It is contended that enactment of Section 36 of the Act of April 9, 1917, Laws 1917, p. 457, which is Section 10682, Revised Statutes 1919, so changed the section as to indicate a legislative intent to deprive special districts of taxes levied under that section on property within such districts. In the case of State ex rel. Monett Special Road District v. Barry County, 302 Mo. 279, 258 S. W. 710, which was decided after the judgment in this case, will be found a discussion and decision of practically identical questions raised in connection with Sections 10682 and 10818, Revised Statutes 1919. While the district involved in that case was organized under Article VII of the Road Law, there is no difference between the operative words of Section 10838 and Section 10818 which would permit a different conclusion in this case. That decision fully disposes of the first question in this case. A district organized and operating under Article VIII of Chapter 98 is entitled to have all taxes collected under Section 10682 from property in such district 'set aside and placed to the credit of the district in which the property was taxable'."

Mr. Joseph C. Crain

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October 5, 1933.

In view of the Supreme Court rulings, this department holds that all taxes collected on property within the Special Road district, after it is duly organized, is entitled to have all taxes collected on property in said Special Road district set aside and placed to the credit of said Special Road district and paid over upon demand to the treasurer of said Special Road district.

We further rule that all moneys on hand to the credit of the road district, out of which the special district was formed, belong to said district.

Respectfully submitted,

W. W. Barnes
Assistant Attorney General

APPROVED:

Roy McKittrick
Attorney General

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