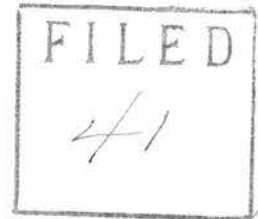


ROADS AND BRIDGES, power and pipe line taxes apportionment to road districts, special and general.

7867-90 R S Mo 1933

April 19, 1933



Hon. W. H. Holmes
Prosecuting Attorney
Marion County
Vienna, Missouri

Dear Sir:

This is to acknowledge your recent letter which reads as follows:

"I would like your opinion on the following proposition, to-wit: The State Tax commission assesses public service corporations, such as pipe lines and power lines running through this county; the County Court fixes the tax rate for road purposes on said valuations and when the tax is paid should the same be divided between all the road districts of the county, both general and special districts or only among the general districts of the county, giving nothing to the special districts?"

Your prompt answer to this inquiry will be appreciated by me."

Section 10068 R. S. Mo. 1929 provides among other things, that all property, real and personal, owned by "electric power and light companies" and "oil pipe lines", shall be subject to taxation the same as property of private persons, and the taxes shall be levied and collected as provided for the taxation of railroad property.

Sections 10032, 10034 and 10038 R. S. Mo. 1929, pertain to county railroad property, its taxation, apportionment and assessment.

Section 7890 R. S. Mo. 1929 provides:

"The county courts in the several counties of this state, having a population of less than two hundred and fifty thousand inhab-

itants, at the May term thereof in each year, shall levy upon real and personal property made taxable by law a tax of not more than twenty cents on the one hundred dollars valuation as a road tax, which levy shall be collected and paid into the county treasury as other revenue, and shall be placed to the credit of the "county road and bridge fund."

Section 7891 R. S. No. 1929 pertains to a special tax, how it is levied, collected and disbursed.

Section 8043 R. S. No. 1929 provides in part the following:

"In all counties in this state where a special road district, or districts, has or have been organized, or where a special road district, or districts, may be organized under this article, and where money shall be collected as county taxes for road purposes or for road and bridge purposes, by virtue of any existing law or laws, or subsequent law or laws that may be enacted, upon property within such special district or districts, * * * the county court shall, as such taxes or licenses are paid and collected, apportion and set aside to the credit of such special road district, or districts, from which said taxes were collected, all such taxes so arising from and collected and paid upon any property lying and being within such special district or districts, * * * so collected from such business carried on or conducted within the limits of such special road district; and the county court shall, upon written application by said commissioners of such special road district, or districts, draw warrants upon the county treasurer, payable to the commissioners of such special road district or districts, or the treasury thereof, for all that part or portion of said taxes so collected upon property lying and being within such special road district, * * *."

The Supreme Court in the case of State ex rel. Special Road

District v. Barry County, 302 Mo. l.c. 291, construed the three preceding sections as follows:

"The three sections (10682, 10683 and 10818) as they now stand do not indicate any change of the legislative purpose with respect to the distribution of road and bridge taxes collected upon property within Special Road Districts.

Section 10683 (7891 R. S. Mo. 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 10682 (7890 R. S. Mo. 1929) which directs the levy of a road and bridge tax in connection with the general levy for county purposes makes no provision for its distribution. But

Section 10818 (8042 R. S. Mo. 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, shall be set aside to the credit of such special road district. The conclusion that 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.* * *".

Section 7867 R. S. Mo. 1929 provides:

"All taxes derived from the levy authorized by section 7890 R. S. 1929, are hereby appropriated to the use of the county court in each county where levied, to be used at the discretion of said court for the construction and maintenance of roads and bridges located within the confines of the county highway system herein provided for as well as all other roads and bridges in such county."

Hon. W. H. Holmes

-4-

April 19, 1933

It is our opinion that Section 7867 R. S. Mo. 1929, gives the county court the power of discretion to divide and use funds derived under the provisions of Section 7890, except those funds derived on property within a special road district. In other words, funds raised on property within a special road district must be apportioned and distributed by the county court to said special road district if application is made therefor.

Very truly yours,

JAMES L. HORNBOSTEL
Assistant Attorney General.

APPROVED

ROY McKITTRICK
Attorney General.

JLM:MM