

COUNTY COURT:

Right to order tax illegally collected  
to be re-distributed.

February 11, 1933

FILED  
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Honorable Douglas Mahnkey  
Clerk of the County Court  
Forsyth, Missouri

Dear Mr. Mahnkey:

We acknowledge receipt of your letter dated  
February 6, 1933, as follows:

"I am writing you for advice and information which may not be pertaining to your official duty. If this will cause you any embarrassment or if you do not feel fully justified in advising me, please understand that I will not feel offended as I realize that I am "Passing the buck".

A Special Road District, The Hollister-Kirbyville, of this County, thru its Board of Commissioners, levied a road tax of .25 cents above the rate set by law; this being done without a vote of the people in the district. The Missouri Pacific refused to pay said extra rate as there were no bonds outstanding. I am now convinced, after a close study of the matter that the levy is illegal, but a large amount of tax has been collected from individuals, and they are now complaining about this extra charge.

There is more than enough money in the district funds collected this year to pay each taxpayer back the amount he was overcharged. I would like very much to do this if the tax is not legal. I would like to proceed in law to take over enough of the money now on hands in the treasury to repay these tax payers. What would you advise?

The Prosecuting Attorney is attorney for the district, so I am informed, and I have been criticized for taking his advice in the matter, so that is why I am writing you.

I only want to give everyone a fair deal."

Assuming that the tax referred to in your letter was invalid and which we can not pass on on the information contained in your letter, we do not know of any authority in any officer or in the county court to pay or authorize the money illegally collected to be re-distributed.

Honorable Douglas Mahnkey, -2-

February 11, 1933

We think as a protection to the officer in whose hands the funds are, that a proper action should be brought and the judgment of a court of competent jurisdiction secured in the premises. We see no reason why the persons who have paid the taxes could not assign their claims to one person and save court costs in that way.

Very truly yours,

GILBERT LAMB  
Assistant Attorney General.

APPROVED:

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Attorney General.

GL:LC