



January 26, 1933

Hon. Arch M. Skelton  
Prosecuting Attorney  
Lexington, Missouri

Dear Mr. Skelton:

I acknowledge receipt of the request of L. Irwin Morris, your assistant, for an opinion of this department on the following:

"In 1922 the Waverly Special Road District, together with the county of Carroll, at a special election voted in the Waverly district the sum of \$50,000.00 in bonds for the construction of a free bridge across the Missouri river at Waverly. At the present time these bonds have been retired with the exception of \$1,000.00 by levy's within the said district.

"Recent refunds from the State Highway Department under the provisions of the Statutes have been made to the said district to the amount of about \$46,000.00. The commissioners of this district have paid some small attorney fees out of this amount and have been petitioned by the tax payers in the district to return to each individual tax payer who has paid his levy during 1922 to 1932 his proportionate share of the remainder of this fund; in other words a direct refund of tax money to the tax payer."

An investigation of the statutes reveals that there is no statutory authority to make a direct refund of a tax legally collected. Section 9981, R.S. Mo. 1929, provides for the refund of taxes illegally collected, but specifically limits such refunds to levies declared illegal by the Supreme Court of Missouri.

The powers and duties of commissioners of the Waverly Special Road District, are set out in Article 9 of Chapter 42, R.S. Mo. 1929. Their duties in respect to the disbursement of road funds of the district, are provided for in Section 8047, R.S. Mo. 1929, which is as follows:

"The fund received from the poll and road tax of said district shall constitute a general district road fund, and shall be disbursed only as hereinbefore provided, and shall be

used only for working, repairing and improving the public roads of such district as herein provided, and for no other purpose; and no part thereof shall be used for paying damages and costs for opening new roads, but all such damages and costs for opening new roads paid by the county shall be paid out of the other county revenue, except as this article may otherwise provide."

The Legislature has seen fit to modify the above section in respect to the disposition of highway commission refunds to special road districts, by enacting Section 8060, R.S. Mo. 1929, which is as follows:

"In all cases in which the state highway commission may have refunded, or shall refund any moneys to any special road district organized and existing under the laws of this state, the commissioners of such special road district are hereby authorized and empowered to use and apply the moneys so refunded or such part thereof as may be necessary, to pay and retire any outstanding bonds of such special road district or to pay any interest that has accrued or may accrue on such bonds."

Thus permitting the disbursement of this fund for the payment of road district bonds.

A situation similar to yours arose in Kansas City several years ago. Taxes were assessed, and many of the assessments paid, for certain sewer construction in the Turkey Creek sewer district. It was later decided to float a bond issue to pay the expense of this improvement. In order to refund the tax assessment for this improvement, Section 15 of Article 14 of the Constitution was adopted, particularly authorizing the refund of the assessment made.

In view of the lack of statutory authority to make this refund, and of the mandatory wording of Section 8047, R.S. Mo. 1929, it is the opinion of this office, that the refund referred to, would be unauthorized and illegal.

Yours very truly,

H. G. WALTNER, JR.  
Assistant Attorney-General

Approved:

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ROY McKITTRICK  
Attorney General

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