COUNTY COURTS - A County Court is without power to consolidate
TAXES, - general revenue levy with county road and bridge levy; must make separate levies for each.

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February 22, 1934

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Hon. R. Wilson Barrow
Prosecuting Attorney
Macon County
Macon, Missouri

Dear Sir:

Your request of February 2, 1934, to the Public Service Commission for an opinion has been referred to this office. Your request is as follows:

"Mr. W. A. Tibbs, our local County Clerk, since the new Budget Law has taken effect, has been desiring to merge our county Common Fund and Road & Bridge tax levies which previously have been 33¢ and 20¢ respectively into one Common Fund levy for both purposes of 50¢. Our Macon County Common Fund tax levy for last year was 33¢.

In your opinion, would this combining of tax levies and increasing of the common fund levy itself 17¢ cause difficulties in the County with the utility companies, because of Section 9873, R. S. Mo. 1929? Could the utility corporations substantiate their claims that such action would increase the total taxes in any one fund for any one year in excess of 10% and therefore render same unlawful?

We are looking into this matter but would appreciate an expression of your attitude about what our position would be. Personally, I have advised the

> County Clerk to keep his tax levies divided and to proceed as in the past in this County."

We understand your letter to present the question of whether or not the County Court may make one tax levy to cover both the ordinary levy made for county purposes and the levy ordinarily made for county road and bridge purposes.

Under the provisions of Section 9873 R. S. Mo. 1929, which closely follows the limitations prescribed by Section 11 of Article 10 of the Missouri Constitution, a maximum rate of taxation is fixed in all counties of this state "for county purposes". Out of this levy for county purposes is to be paid the usual and ordinary expenses of the county, including the six classifications found in the new budget law, Laws 1933, p. 340.

As a part of the levy for "county purposes" authorized under Section 9873, the County Court shall levy a tax of not more than 20¢ as a road tax, which tax shall be placed to the credit of the "county road and bridge fund".- Section 7890 R. S. Mo. 1929. This money collected as taxes for county road and bridge purposes is to be spent by the County Court in its discretion. Section 7867 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."

In State ex rel. v. Wabash Railway Co., 5 S. W. 2d, 378 (1928), the court held that the levy of taxes for county road purposes was a levy coming within the meaning of the term "county purposes" as used in Section 9873.

Even though a levy for county road and bridge purposes constitutes part of the levy authorized by the Constitution and

by statute for "county purposes", the funds derived from each source should be kept separately. In this connection, the county road and bridge fund must not be confused with the special road and bridge fund authorized by Section 7891 R. S. Mo. 1929. The special road and bridge fund tax does not come within the term "county purposes" as used in Section 7893. - State ex rel. v. Cooperage Co., 295 S. W. 78 (1927).

It is now well settled that in this state taxes can only be levied for public purposes and disbursed for the purposes collected, subject to exceptions made by the statutes. In this connection we call your attention to the provisions of Section 12,167 and Section 12,168 R. S. Mo. 1929.

Section 12,167 R. S. Mo. 1929 provides as follows:

> "Whenever there is a balance in any county treasury in this state to the credit of any special fund, which is no longer needed for the purpose for which it was raised, the county court may, by order of record, direct that said balance be transferred to the credit of the general revenue fund of the county, or to such other fund as may, in their judgment, be in need of such balance."

Section 12, 168 R. S. Mo. 1929 provides as follows:

> "Nothing in the preceding section shall be construed to authorize any county court to transfer or consolidate any funds not otherwise provided for by law, excepting balances of funds of which the objects of their creation are and have been fully satisfied."

It would appear that under the provisions of Section 12,171 it is the duty of the County Treasurer to keep the moneys

the separate funds and to pay warrants drawn on that fund only when there is sufficient money in the fund to pay the warrant presented. The Legislature provided a penalty against the County Treasurer for the violation of this provision - Section 12180.

Section 9873 limits the amount of revenue that a county may receive in succeeding years, and provides:

> "the county court shall not have power to order a rate of tax levy on real or personal property for the year 1921 which shall produce more than ten per cent in excess of the amount produced mathematically, by the rate of levy ordered in 1920, and in no subsequent year may any county court or any officer or officers acting therefor, order a rate of tax levy that will produce mathematically more than ten per cent in excess of the taxes levied for the previous year."

It is, therefore, the opinion of this office that a County Court is without authority to increase its levy for county purposes in excess of this ten per cent limitation, and is without authority to combine the general revenue levy and the levy of taxes made for county road and bridge purposes. Each levy should be made separately and the money used for the purposes for which it was levied. To allow one levy to be made in lieu of the general revenue levy and the levy for county road and bridge purposes would permit the County Court, in some instances, to increase the rate of levy for general revenue purposes more than ten percent, in violation of the provisions of Section 9873. Any balances left in a special fund which are

no longer needed for that purpose may be transferred by the County Court to the general revenue fund of the county. Section 12167.

Respectfully submitted,

FRANKLIN E. REAGAN
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General

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