SPECIAL ROAD DISTRICT: Incorporated city within special road district not entitled to part of general road funds.

May 4, 1934. 5-14

Hon. Gordon P. Dorris
Prosecuting Attorney
Oregon County
Alton, Missouri

Dear Mr. Dorris:

We are in receipt of your letter of recent date with request for an opinion; which letter of request is as follows:

> "Will you please advise me on the following question:
>
> Can an incorporated city within a special road district (in county not under township organization) require the County Court to order turned over to them a part of the road funds collected by the county collector under the general road levy? Or, are these funds so collected payable only to the treasurer of the special road district?"

For answer to the question asked in your letter, we must look to the provisions of the law relative to the organization and powers of special road districts in counties not under township organization.

Section 8024, R. S. Mo. 1929, provides where and how special road districts may be organized, and is as follows:

> "Territory not exceeding eight miles square, wherein is located any city, town or village containing less than one

> hundred thousand inhabitants, may be organized as hereinafter set forth into a special road district: Provided, however, the provisions of this section shall not apply to counties under township organization, and shall not apply to all counties in this state now containing or which may hereafter contain 50,000 inhabitants or more and lying adjoining any city of this state containing 300,000 inhabitants or more."

Section 8025 R. S. Mo. 1929, provides that special road districts "shall be a body corporate and possess the usual powers of a corporation for public purposes," etc.

Section 8026, R. S. Mo. 1929, provides the manner in which the commissioners of the special road district shall be selected and succeeding sections provide a scheme and system for caring for and management of the roads in said special road districts; and Section 8033, R. S. Mo. 1929, sets out the powers and duties of the board of commissioners, which section reads as follows:

> "Said board shall have sole, exclusive and entire control and jurisdiction over all public highways within its district outside the corporate limits of any city or village therein to construct, improve and repair such highways, and shall remove all obstructions from such highways, and for the discharge of these duties shall have all the power, rights and authority conferred by general statutes upon road overseers, and said board shall at all times keep the public roads under its charge in as good repair as the means at its command will permit, and for this purpose may employ hands at fixed compensations, rent, lease or buy teams, implements, tools and machinery, all kinds of motor power, and all things needful to carry on such road work: Provided, that the board may have such road work or any part of such work done by contract, under such regulations as the board may prescribe."

Section 8041, R. S. Mo. 1929, provides that:-

> "One fourth of all the pool or billiard table licenses collected by any city within any such special road district shall be set apart as collected by the city council for the improvement of the roads by the board of commissioners of such district, * * * * * * * * * * *.";

and this section further provides the method by which this money may be paid for the use of the board of commissioners of the special road district.

We then have Section 8042, R. S. Mo. 1929, which provides for the dispostion of county taxes for road purposes which we hereafter set forth as follows:

> "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, or where money shall be collected for pool or billiard table licenses, upon business within such special road 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, and also one-half of the amount collected for pool and billiard table licenses, 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, or districts, and also for one-half of the amount so collected for pool and billiard table licenses, so collected from such business carried on or conducted within the limits of such special road district, or districts."

In construing the above sections relative to the special road districts and the dispostion of road tax moneys, the Supreme Court in State ex rel. Monett Special Road District v. Barry County et al., 258 S. W. 710, l. c. 713, had this to say:

> "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 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, 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, 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."

And the Supreme Court further said in Little Prairie Special Road District et al. v. Pemiscot County et al., 249 S. W. 599, l. c. 600:

> "The statute formerly provided (sections 10481 and 10594, R. S. 1909; Laws 1913, pp. 667, 675), and still provides (section 10818, R. S. 1919), that the part of the general county levy which is set apart for road and bridge purposes and which is assessed and collected on property within a special road district, together with a designated part of certain licenses, shall be placed to the credit of such special road district and paid out to the commissioners or treasury of that district 'upon written application by said commissioners.' Carthage Special Road District of Jasper County v. J. C. Ross et al., 270 Mo. loc. cit. 82, 192 S. W. 976."

We think from a reading of the statutes, and the construction put thereon by the Supreme Court, that it was contemplated that the board of commissioners of the special road districts should expend all of the general road taxes levied and collected within the boundaries of the special road district, and we are further fortified in this opinion by the fact that Section 8041, supra, provides that a part of the moneys collected by any city within a special road district upon pool and billiard table licenses is payable to the board of commissioners of the special road district in which such city may be, and by Section 8034, R. S. Mo. 1929, which provides that the board of commissioners in a special road district "shall have authority to expend not more than one-fourth of the revenue which may now or which may

hereafter be paid into its treasury for the purpose of grading and repairing any roads or streets within the corporate limits of any city within said special road district." And said section further provides how and in what way the money shall be expended on the roads and streets in said cities.

CONCLUSION.

It is, therefore, our opinion that the road funds collected by the county collector under the general road levy, are payable to the commissioners of such special road district, or districts, or the treasurer thereof upon timely written application by the commissioners therefor, and that an incorporated city within as special road district cannot require the county court to order turned over to it the part of the road funds collected by the county collector under the general road levy within the corporate limits of said city.

Very truly yours,

COVELL R. HEWITT
Assistant Attorney-General.

APPROVED:

ROY McKITTRICK
Attorney-General.

CRH:EG