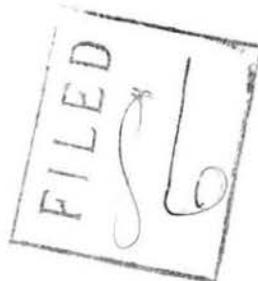


- R-T
- I. RELATING TO PAYMENT OF TAXES BY TAXPAYERS IN SPECIAL ROAD DISTRICTS IN COUNTIES UNDER TOWNSHIP ORGANIZATION.
  - II. RELATING TO SPECIAL ROAD AND BRIDGE TAXES, LEVY AND PAYMENT:

July 2, 1934



Hon. Forrest Smith  
State Auditor  
Jefferson City, Missouri

Dear Sir:

We acknowledge your letter of date June 29th, 1934, in which you state and inquire as follows:

"We are in receipt of a request from a County Clerk for an opinion from your office establishing the tax to be paid in a Special Road District which comprises a part of a Township, this County having Township organization. The taxpayers within this Special Road District, of course, are subject to taxation under the regular procedure for state, County and School taxes.

The first question is, do the taxpayers in the Special Road District pay to the Township the levy made by the Township Board for Township general purposes?

The second question is, do the taxpayers in this Special Road District pay the special road and bridge tax levied by the Township Board in addition to the levy which might be made by the Special Road District?"

I

Taxpayers in Special Road Districts, under Township organization, pay to Township trustee and ex officio treasurer taxes levied by township board for general purposes.

Section 12299 Revised Statutes, 1929, provides as follows:

"In each township in this state, organized under the provisions of this chapter, there shall be a board of directors, composed of the township trustee and members of the township board, whose duty it shall be: First, to audit all accounts of township

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officers for services rendered as such officers except the township assessor, for services as such assessor; second, to audit all other accounts or demands legally presented to them against the township; third, to levy all taxes for township, road and bridge purposes, and all other duties provided by this chapter for the township board of directors to perform."

Section 12288 Revised Statutes, 1929, provides as follows:

"The township trustee and ex officio treasurer of each township shall receive and pay over all moneys raised therein for defraying township expenses: Provided, that before entering on the duties of his office he shall execute such bond as is required in section 12279; and in case of default, it is hereby made the duty of the township clerk to institute suit thereon, in the name of the township, in any court of competent jurisdiction."

From section 12299 (Supa) it will be observed power is vested in the township board to levy taxes for township, road and bridge purposes, and under and by the provisions of section 12288 (Supa) the township trustee and ex officio treasurer of the township shall receive all moneys raised for defraying township expenses.

## II.

Taxpayers in Special Road Districts in Counties having township organization, pay the taxes levied by the township board for road and bridge purposes, in addition to Special Road and Bridge tax, provided under section 22 Article X of Constitution.

Section 22 of Article X of the Constitution of Missouri, provides as follows:

"In addition to taxes authorized to be levied for county purposes under and by virtue of section 11, article X of the Constitution of this State, the county court in the several counties of this State not under township organization, and the township board of directors in the several counties under township organization, may, in their discretion,

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levy and collect, in the same manner as State and county taxes are collected, a special tax not exceeding twenty-five cents on each \$100 valuation, to be used for road and bridge purposes, but for no other purpose whatever; and the power hereby given said county courts and township boards is declared to be a discretionary power."

In State Ex Rel Kersey v. Land & Cooperage Company, 317 Mo. 1. c. 47, the court said:

"Section 22 of Article 10 of the Constitution expressly grants an absolute discretion to the county court to levy a tax or not to levy a tax for road purposes, as its judgment may suggest. The tax of twenty cents on the one hundred dollars' valuation will be sufficient for road purposes in many of the counties; even a less sum may be sufficient. However, there may be counties during a certain time in need of more funds for road purposes than can be realized from a levy of twenty cents on the one hundred dollars' valuation, authorized by Section 10683, Revised Statutes 1919. Many emergencies may arise causing the need of more money, for such purposes, than can be realized under the levy authorized by said section. It is no answer that the Legislature in that event could raise the maximum of twenty cents on the one hundred dollars' valuation for road purposes. The rate fixed for county purposes in counties having ten million dollars and not exceeding thirty million dollars is fifty cents on the one hundred dollars' valuation, hence only thirty cents on the one hundred dollars valuation is left for other general county purposes. It is not likely the Legislature could, in fairness to other demands for county purposes, fix the maximum rate for road purposes higher than twenty cents on the one hundred dollars' valuation. Again, if a higher rate was fixed it would apply to all counties in the state, and many of these counties would not need the amount of money realized from a higher rate of taxation. Therefore, we conclude that the power granted to the county courts of this state by Section 22 of Article 10 of the Constitution to levy and collect, in their discretion, a special tax not to exceed twenty-five cents on the one hundred dollars' valuation for road and bridge purposes, is a power to be used in emergencies, as in the judgment of the court

an emergency exists; and that this power was lodged by the organic law with the county courts that these emergencies might be speedily taken care of. The fact that the fund realized from a levy under Section 22 of Article 10 of the Constitution is for county purposes, is not controlling or even persuasive. Certainly, it cannot be classified under general county purposes, for this classification is fixed by law (Sec. 12866, R.S. 1919); and the Constitution classifies it as a special road and bridge tax."

What the Supreme Court said in the foregoing case with reference to the power granted to county courts of this State, by section 22 of Article X of the Constitution to levy and collect, in their discretion, a special tax not to exceed twenty-five cents on the one hundred dollars' valuation for road and bridge purposes applies with equal force to township boards in counties having township organization.

It will be observed that the tax levied by the Township Board of directors, under and by provision of Section 22 of Article X of the Constitution, is in addition to any road and bridge tax that may be levied by the commissioner of a special road District as provided in section 8182 R.S. 1929, which reads as follows:

"The board of commissioners of any district so incorporated shall have power to levy, for the construction and maintenance of bridges and culverts in the district, and working, repairing and dragging roads in the district, general taxes on property taxable in the district, and shall also have power and authority and be its duty to levy special taxes for the purpose of paying the interest on bonds when it falls due and to create a sinking fund sufficient to pay the principal of such bonds at maturity; and, whenever such commissioners shall, at any time between the first day of January and the first day of March of any year, file with the clerk of the county court a written statement that they have levied such tax, and stating the amount of the levy for each hundred dollars assessed valuation, the county clerk, in making out the tax books for such year shall charge all property taxable in such district with such tax, and such tax shall be collected as county taxes are collected. Whenever it shall be made to appear to the state auditor that the board of commissioners has failed or neglected to comply

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with this section in making provision for the payment of interest on and the principal of bonds issued it shall be the duty of the state auditor, on or before the first day of May, to perform and discharge the duties of the board of commissioners in so far as it is its duty to levy special taxes for the purpose of paying the interest on and the principal of bonds issued."

In view of the said statutory authority, and the grant given to Township Boards in their discretion to levy a special road and bridge tax, not to exceed twenty-five cents on each \$100 valuation, we hold that this tax is in addition to any road and bridge tax, levied by the commissioners of a special road district organized under and by virtue of Article 16, R.S. 1929.

Respectfully submitted,

W. W. Barnes

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Assistant Attorney-General

APPROVED:

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Attorney-General

WB/AS