

SPECIAL ROAD DISTRICT: Entitled to all road and tax money collected in such district.

5-18
MAY 13, 1935



Mr. Lynn Bradford,
City Attorney,
Rolla, Missouri.

Dear Sir:

We wish to acknowledge your letter of April 25th, wherein you state as follows:

"A controversy has arisen between the County Court of Phelps County and the Rolla Special Road District (in Phelps County) as to the amount of road tax money which this district is entitled to receive from the 1934 revenue. The City of Rolla, located in the Rolla Special Road District, is vitally interested in this question since it receives 25% of the road tax money collected in this district, and I, as City Attorney of Rolla, and at the request of the Mayor and Board of Alderman, submit the following statement of the matter and respectfully ask you for an opinion as to the legal rights of the parties involved.

Phelps County has an assessed valuation of more than Ten Million and less than Thirty Million Dollars, and in accordance with Section 9373 of R. S. 1929, the County Court (for the year 1934) levied 50¢ on the \$100 valuation for general revenue purposes, including 10¢ for road and bridge purposes authorized under Section 7890 R. S. 1929. Then, in accordance with the County Budget Law, Section 2 Page 341-342 Laws of Mo. 1933, the County Court proceeded by order to appropriate, apportion, and subdivide all the revenue to be received in the General Revenue Fund of Phelps County for the year 1934. And it further ordered that there be levied and collected upon all real estate and personal property assessed in the County of Phelps for the taxes of 1934 as a Special Tax of 10¢ on the \$100 valuation, in accordance with the provisions of Section 7891 R. S. 1929.

The fund arising from said tax to be known and designated as the special Road and Bridge Fund of Phelps County.

The County Court is turning over to the Rolla Special Road District all the revenue collected in such district from the Special Road and Bridge Levy under Section 7891 but refuses to turn over the revenue collected in such district from the 10% levy made and authorized by Section 7890, contending that under the Budget Law this is a part of the general revenue fund and that the Special Road District has no right to it.

The question at issue is whether or not, since the enactment of the County Budget Law, the County Court, after making a road and bridge levy under Section 7890, R. S. 1929, is required to turn over to the Special Road District all the revenue derived from such levy? In other words, since the enactment of the Budget Law, does Section 8042 R. S. 1929 and the case of Billings Special Road District v. Christian County, 319 Mo. 963, 5 S. W. (2d) 378, construing it, still apply and entitle the Special Road District to all the road tax money collected in such district, as provided in said section, where levies are made under both Sections 7890 and 7891 R. S. 1929?

In behalf of the City of Rolla, I wish to say that your Opinion on this question will be very greatly appreciated."

Section 7890, R. S. Mo. 1929, provides as follows:

"The county courts in the several counties of this state, having a population of less than two hundred and fifty thousand inhabitants, at the May term thereof in each year, shall levy upon all real and personal property made taxable by law a tax of not more than twenty cents on the one hundred dollars valuation as a road tax, which levy shall be collected and paid into the county treasury as other revenue, and shall be placed to the credit of the 'county road and bridge fund.'"

The above section authorizes the levy of a tax of twenty cents on the one hundred dollars valuation for the "county road

and bridge fund". You state that the county court has levied a tax of ten cents, hence it is within the limitation authorized.

Section 7891, R. S. No. 1929, provides as follows:

"In addition to the levy authorized by the preceding section, the county courts of the counties of this state, other than those under township organization, in their discretion may levy and collect a special tax not exceeding twenty-five cents on each one hundred dollars valuation, to be used for road and bridge purposes, but for no other purposes whatever, and the same shall be known and designated as 'the special road and bridge fund' of the county: Provided, however, that all that part or portion of said tax which shall arise from and be collected and paid upon any property lying and being within any road district shall be paid into the county treasury and placed to the credit of the special road district, or other road district, from which it arose, and shall be paid out to the respective road districts upon warrants of the county court, in favor of the commissioners, treasurer or overseer of the district, as the case may be: Provided, further, that the part of said special road and bridge tax arising from and paid upon property not situated in any road district, special or otherwise, shall be placed to the credit of the 'county road and bridge fund' and be used in the construction and maintenance of roads, and may, in the discretion of the county court, be used in improving or repairing any street in any incorporated city or village in the county, if said street shall form a part of a continuous highway of said county leading through such city or village; but no part of said fund shall be used to pay the damages incident to, or costs of, establishing any road: Provided further, that no warrant shall be drawn in favor of any road overseer until an account for work done or materials furnished shall have been presented and audited by the county court."

The above section authorizes the levy of a special tax of twenty-five cents on the one hundred dollars valuation for "the special road and bridge fund". You state that the county court has levied a tax of ten cents, hence it is within the limitation authorized.

Section 8042, R. S. No. 1929, provides 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 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 the case of Billings Special Road Dist. v. Christian County, 5 S. W. (2d) 378, l. c. 381, our court in construing the above section, said:

"Section 10682 (substantially the same as Section 7890, R. S. No. 1929) makes no direction as to the distribution of the money collected under its provisions. However, in State ex rel. v. Barry County, 302 Mo. 279, 258 S. W. 710, it was held that while section 10682 made no provision for distribution of the taxes collected thereunder, yet that, under the provisions of section 10818 (now section 8042, R. S. No. 1929), applicable to special road districts, it is required that all taxes for road and bridge purposes collected by virtue of any existing law, or any subsequent law

thereafter enacted, upon property within a special road district, shall be set aside to the credit of such district to be paid to the treasurer of such district, upon written application of the commissioners of such district. The county court is required, as such taxes are paid and collected, to apportion and set them aside to the credit of the district."

Your inquiry is whether or not, since the enactment of the County Budget Law, the County Court, after making a road and bridge levy under Section 7890, supra, is required to turn over to the Special Road District all the revenue derived from such levy? In other words, since the enactment of the Budget Law, does Section 8042, supra and the case of Billings Special Road District v. Christian County, supra, construing it, still apply and entitle the Special Road District to all the road tax money collected in such district, as provided in said section, where levies are made under both Sections 7890 and 7891, supra?

Section 2, Laws of Missouri 1933, p. 341, of the County Budget Law, provides in part as follows:

"The court shall classify proposed expenditures in the following order:

Class 3: The county court shall next set aside and apportion the amount required, if any, for the upkeep, repair or replacement of bridges on other than state highways (and not in any special road district) which shall constitute the third obligation of the county."

Our courts have repeatedly held that the primary object of all statutory construction is to ascertain and give effect to the legislative intent. The above section is evidence of the clear intent of the Legislature not to include special road districts within the provisions of the County Budget Law.

Our position is strengthened by the very recent case of Hawkins v. Cox, reported in 66 S. W. (2d) (Mo.) 539, l. c. 540, wherein the Supreme Court of Missouri, citing the case of Billings Special Road District, supra, said:

"Under these and other statutes referred to, it is settled that this special road district is entitled to whatever taxes are levied and collected on property within its boundaries, whether levied by the road district itself under section 8067 (Mo. St. Ann., Sec. 8067, p. 6858) or by the county court under sections 7890 and 7891, R. S. 1929 (Mo. St. Ann., Secs.

Mr. Llyn Bradford

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7890, 7891, pp. 6765, 6766). State ex rel. v. Barry County, 302 Mo. 279, 258 S. W. 710; State ex rel. v. Holman, 305 Mo. 195, 264 S. W. 908; Billings Special Road District v. Christian County, 319 Mo. 963, 5 S. W. (2d) 378."

From the foregoing, we are of the opinion that the enactment of the County Budget Act has not changed the effect of Section 8042 and the Billings case, supra. They still apply and entitle the Rolla Special Road District to all the road and tax money collected in such district. An examination of Class 3 of the County Budget Act clearly evidences the intention of the Legislature not to include a special road district within the provisions of such act, and, as we have previously stated, such position is strengthened by the very recent case of Hawkins v. Cox, supra. We are of the opinion that the County Court must turn over to the Rolla Special Road District all revenue collected in such district from the levy made and authorized by Section 7890, supra.

Respectfully submitted,

WILLIAM O. SAWYERS,
Assistant Attorney-General.

APPROVED:

ROY McKITTRICK
Attorney General

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