

ROADS & BRIDGES: Interest derived from county depository
on funds, goes to "county road and bridge funds."

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February 7, 1936.



Honorable C. Arthur Anderson
Prosecuting Attorney
St. Louis County
Clayton, Missouri

Dear Mr. Anderson:

This is to acknowledge your letter dated February
3, 1936, as follows:

"I have been requested by the treasurer
of St. Louis County to obtain from you
an opinion respecting several statutes
that seem to be somewhat in conflict.

"He has been requested by the St. Louis
County Highway Engineer to transfer the
interest of all funds other than the
school funds to the Road and Bridge
Fund, in compliance with Sec. 12186.
Section 7891 sets out of course the
special tax for roads and bridges and
then, in addition to that, there comes
in a budget law passed in 1933, giving
the County Court authority to allocate
funds.

"I should like very much to have an
opinion from you as to whether or not
the interest from all funds other than
school funds should be transferred as
provided in Sec. 12186 to the Road and
Bridge fund, in view of Sec. 7891 and
the Budget Law of 1933."

We are enclosing herewith copy of an opinion rendered
by this Department on November 25, 1933, to Honorable Andy W.
Wilcox, State Tax Commission, relative to the disposition of

taxes levied by virtue of Section 7890 and 7891, R. S. Mo. 1929 for the "county road and bridge fund" (Sec. 7890) and the "special road and bridge fund (Sec. 7891). You will note that it is mandatory upon the county court to levy the tax provided for in Section 7890, while it is discretionary with them to levy the additional tax provided for by Section 7891.

Your inquiry concerns only Section 7891, R. S. Mo. 1929. However, in order to understand the applicability of the provisions of Section 12186, R. S. Mo. 1929, it is necessary to keep in mind the fact that there are two separate and distinct funds relating to roads and bridges, and for that reason the enclosed opinion will be of assistance.

It is also well to bear in mind the language of the Supreme Court in State ex rel. Special Road District v. Barry County, 302 Mo., l. c. 291, wherein, in interpreting Sections 7891 and 8042, it said the following:

"Section 10818 (8042 R. S. Mo. 1929), 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. * * * * *"

You will note that in the above case the court referred to all moneys collected as taxes. May it be said that interest received from funds derived by Section 7891 and deposited in a bank according to the provisions of Section 12186, R. S. Mo. 1929, belong to said "special road district fund?" We think not.

Section 12186, R. S. Mo. 1929, provides for a county depository, and in part provides as follows:

"The interest upon each fund shall be computed upon the daily balances with the depository, and shall be payable to the county treasurer monthly who shall place the interest on the school funds to the credit of those funds respectively, and the interest on all other funds to the credit of the road and bridge fund."

Your attention is invited to the fact that only the interest on all other funds received by virtue of the depository goes into the "road and bridge fund." Section 12186, supra, uses the words "road and bridge fund" and Section 7890, supra, uses the words "county road and bridge fund," and Section 7891, supra, uses the words "special road and bridge fund"; and the question for determination being: Into what fund should the interest received be placed? Should it be placed in the "county road and bridge fund" or the "special road and bridge fund," or should it be given to the fund from whence earned?

As heretofore pointed out, Section 7890 is mandatory and was on the statute books long before present Section 7891, and when Section 7891 was enacted, creating an additional tax for "special road districts" (Laws of Mo. 1909, p. 727), it necessitated the identifying of the two funds, which was done by designating the fund derived by virtue of Section 7890 as the "county road and bridge fund" and the fund derived by virtue of Section 7891 as the "special road and bridge fund." When Section 12186 was enacted only one fund was in existence, and that was the "road and bridge fund" and said "road and bridge fund" in existence at the time Section 12186 was enacted, is now what is termed and called the "county road and bridge fund."

Thus, we believe, in view of the historical background surrounding the enacting of the sections under discussion, that the words "road and bridge fund," used in Section 12186, should now be interpreted as "the county road and bridge fund." So that said Section 12186, in view of our interpretation, will now read "and the interest of all other funds to the credit of the county road and bridge fund."

Hon. C. Arthur Anderson

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Feb. 7, 1936.

In conclusion, it is our opinion that the interest received by virtue of Section 12186, on funds derived by Section 7891, should go into the "county road and bridge fund."

Having taken the above view of Section 12186, we deem it unnecessary to comment on the provisions of the Budget Law of 1933 (Laws of Mo., 1933, page 349, Sec. 16) as being applicable to the matter under consideration.

Yours very truly,

James L. HornBostel
Assistant Attorney-General

JLH:EG

APPROVED:

ROY McKITTRICK
Attorney-General