

CITIES: HIGHWAYS: Special road and bridge funds may be spent by county within cities under certain conditions, but cities not entitled to require it.

October 23, 1936.

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Hon. J. E. Poole,
Clerk, Scotland County Court,
Memphis, Missouri.

Dear Mr. Poole:

We acknowledge receipt of your inquiry which is as follows:

"I would like very much to have an opinion on the following matters pertaining to our county.

"We have one road district which embraces the entire county and known as Scotland County Road District. We have no Special Road Districts in the county but the towns of Memphis, Gorin, Rutledge, Granger, and Arbela have roads lying within the city limits of each town which the county does not maintain.

"The city of Memphis levy a city tax for city purposes alone which includes a twenty cent levy for road purposes. Each town also levies and collects a Poll Tax.

"The county levied eighteen cents on each hundred dollar valuation under Section 7891 this year.

"Are the above mentioned towns entitled to the part of the special tax which arose and was collected in each city or town and does the county have to turn such collections to each city or town? If so, does each city or town have to present a statement of materials furnished and work performed which must be passed upon by the county court in order to draw their money?"

We understand your question to be, is a city entitled to have the county court turn over to the city a part of the special road and bridge tax levied?

Section 7891, R. S. Mo. 1929, provides the authority for the county court in levying a special road and bridge tax. It will be observed that the latter portion of said section provides that the part of the money arising from the collection of taxes for special road and bridge purposes on property not located in any road district is to be placed to the credit of the "county road and bridge fund", and to 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."

It will be further observed that this last quoted part of said section places the discretion in the county court of so using said funds. In other words, if they see fit to use a part of said funds in improving or repairing a street in an incorporated city, etc., and such is within the county and forms a part of a continuous highway of said county leading through such place, they may do so, but are not required to do so.

In the case of *Billings Special Road District v. Christian County*, 5 S. W. (2d) 378, 319 Mo. 963, l. c. 975, after discussing the case of *Hannibal v. Marion County*, 69 Mo. 571, and other cases there cited, states:

"Here the question is as to the power of the legislature to direct a disbursement of taxes collected, and an examination of the two cases referred to in the 15th and 34th volumes of our reports seems to render any additional investigation into this question superfluous. It was held in both these cases that the legislature had full power to direct what should be done with the taxes levied and collected from any county."

With respect to the right of special road districts to receive their portion of the money collected from such a tax on property within the district, the legislature has definitely spoken, saying that they shall be entitled to the same. Cases so holding are *State ex rel. Special Road District v. Holman*, 305 Mo. 195, *State ex rel. Special Road District v. Barry County*, 302 Mo. 279, and *Billings Special Road District v. Christian County*, supra, basing their conclusion on the fact that the legislature had definitely so stated with respect to such special road districts.

But if the tax money so collected by the county is not collected from property within the road district to which the legislature refers when it directs the expenditure of money arising from the taxes collected within such road districts, the legislature has only expressed itself in restricting the powers of the county court in the expenditure of such funds by the language used in the latter part of Section 7891, supra. By that language they place the discretion in the county court of spending this money within the towns therein designated, provided it is spent in repair or improvement of streets within such towns, and provided further that the towns are located in the county and that such streets are a part of the continuous road system of the county, and by implication, it would seem, limited the counties to this method of expending said funds within the city, which would lead to the conclusion that the county would not be authorized to expend said funds on streets within such cities which did not come within the above classification.

The statement contained in the first part of your inquiry that you have one road district which embraces the entire county and is known as Scotland County Road District is rather a novel situation, but your inquiry does not raise the question as to whether this special road district or this road district comprising the whole county is entitled to have these funds set over to it.

We find no provision in the law authorizing cities to require the county court, acting for the county, to pay over to a city any part of the special road and bridge funds.

CONCLUSION

It is our opinion that the towns set forth in your inquiry are not entitled as a matter of right to have turned over to them by the county court any part of the special road and bridge taxes, and that it is discretionary with the county court as to whether they spend within said towns or cities any part of the funds of the special road and bridge tax levy, and that if they exercise their discretion to spend a part of said special road and bridge funds within the city, they should be spent only on streets within the city that are a continuation and part of the county road system, and the city or town in which they are expended must be located within the county.

Yours very truly,

DRAKE WATSON,
Assistant Attorney General.

APPROVED:

JOHN W. HOFFMAN, Jr.,
(Acting) Attorney General.

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