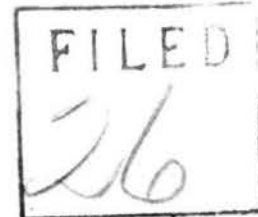


ROADS AND BRIDGES: Special road district cannot make claim and receive funds on a general levy of fifty cents on the \$100.00 valuation unless the levy is made under Section 7890 R.S. Mo. 1929.

November 2, 1938

Mr. George L. Elam
Clerk of the County Court
Ralls County
New London, Missouri



Dear Mr. Elam:

This Department is in receipt of your request for an opinion of sometime ago, and for convenience your letter is herewith quoted in full:

"In the year 1937 the County made a levy for county purposes of 50¢ on the \$100. valuation on all taxable property in the County. There was no levy made by the Court under Section 7890 for county road purposes. We have one special road district in the County, namely, the Nadine Special. On the money derived from the 50¢ County levy they demanded that they receive a part of that revenue and presented a claim to the County Court in the amount of \$417.02, which the Court allowed.

"Since that time this question has been debated here in the County as to whether or not the Nadine Special Road District was entitled to receive this money, and before it comes up again I would like for you to give me a written opinion setting out whether or not this Special road district would be entitled to any of the funds received from the county revenue rate."

We later wrote you for additional information and in your letter of October 27th you very kindly favored us with the same, which is as follows:

"In answer to your letter of July 22, will state that a levy of 15¢ on \$100. valuation was made under Section 7891 for the last several years on all valuation in the county, except in our only Special Road District (Nadine Special) so of course they are not entitled to any money from this levy.

"For a number of years before, and including 1935, the court made a levy of 10¢ under Section 7890. Since 1935 the Court has done away with this levy and at the same time raised the county levy from 40¢ to 50¢. This was done on account of the budget law and the court is now using Class #3 to take care of road expenses, other than the part paid by 7891 levy.

" In 1936 the Court budgeted \$10,000. in Class #3, which was approximately 10¢ on the County's entire valuation including Nadine Special Road and all cities. During the summer of 1937 the county was audited by State auditors.

"Mr. Bryan Tout, one of these auditors, informed me that Nadine Special District was entitled to a part of this levy of 50¢. I arrived at the amount of \$417.02 for Nadine Special District by giving them 10¢ on \$100. for their valuation of real and personal property. The Court has since been informed that they should not

only refuse to pay anything more but should demand that the \$417.02 be refunded to the County. I am sure the Court is not intending to ask for this refund. One reason the Court is confused is that if Nadine Special District is entitled to part of the 50¢ levy then our cities, seemingly, would also have something coming."

Since receiving the additional information we find it necessary to revise our opinion written under the facts as contained in your original letter.

Under Section 9867 R.S. Missouri 1929, certain taxes are to be assessed, levied and collected. Said section being as follows:

"The following named taxes shall hereafter be assessed, levied and collected in the several counties in this state, and only in the manner, and not to exceed the rates prescribed by the Constitution and laws of this state, viz.: The state tax and the tax necessary to pay the funded or bonded debt of the state, the funded or bonded debt of the county, the tax for current county expenditures, the taxes certified as necessary by cities, incorporated towns and villages and for schools."

Formerly under Section 9874 R.S. Missouri 1929, the revenue of a county was apportioned into five classes without priority payment. In 1933 the Legislature enacted a budget law which also apportioned the revenue of every nature for county purposes into five classes, each class receiving priority of payment over the succeeding class. Class 3, page 341, Laws of Missouri 1933, being as follows:

"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."

The above class refers only to the repair and upkeep on bridges and specifically excludes special road districts therefrom. Any funds which might have been allocated under the above class would not entitle the Nadine Special Road District to a claim for any amount of money.

We next consider Section 7890 R.S. Missouri, which is 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 centson 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.'"

Under this Section it has been construed that it is the mandatory duty of the county court to levy in some amount discretionary with the Court, of course not to exceed twenty cents on the One hundred dollar valuation. It has further been construed that when timely application is made by a special road district for its proportionate share of the funds derived under Section 7890 that said special road district is entitled to the same. State ex rel. vs. Burton, 283 Mo. 41; Billings Special Road District vs. Christian County, 319 Mo. 964. You state in your last letter that the County Court did not make any levy under Section 7891, therefore, the Nadine Special Road District is not entitled to demand or have any claim insofar as this section is concerned. It is needless to discuss Section 7891

for the reason that any levy made under said section is discretionary with the county court and you state in your letter that no levy in fact was made by the County Court. Therefore, this section is eliminated.

There must be some authority by statute for the payment of the same as was said in the case of Billings Special Road District, 5 S.W. (2d) 378, l. c. 382:

"The revenues of a county are not the property of the county in the sense in which the revenue of a private person or corporation is regarded. A county being a public corporation existing only for public purposes connected with the administration of a state government, its revenue is subject to the control of the legislature, and when the legislature directs the application of a revenue to a particular purpose, or its payment to any party, a duty is imposed and an obligation created on the county."

CONCLUSION

A special road district under the statutes creating the same and defining its powers and limitations, is authorized if it so desires to levy its own tax and of course is entitled to the funds derived under its own levy, but in the absence of any such levy and in the absence of any levy being made under the sections heretofore discussed, the Nadine Special Road District insofar as the levy of fifty cents on the One hundred dollar valuation, is in the same position as a common or any other road district in the county. Under the facts which you have outlined, the Nadine Special Road District is not entitled to any more consideration or is in any better position to demand a claim than an individual or other political subdivision of the

Mr. George L. Elam

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county. The total levy of fifty cents was a general levy on all the taxable property of the county, and for the further reason that there is no authority under any statute for the same we are of the opinion that the claim of \$412.02 demanded and paid by the Nadine Special Road District is illegal and should not have been paid.

Respectfully submitted,

OLLIVER W. NOLEN
Assistant Attorney General

APPROVED:

J. W. BUFFINGTON
(Acting) Attorney General

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