

SPECIAL ROAD DISTRICTS)  
COUNTY COURTS )

County court cannot levy different rates in different special road districts for special road and bridge tax.

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April 7, 1938.

Honorable O. A. Kamp  
Prosecuting Attorney  
Montgomery County  
Montgomery City, Missouri



Dear Sir:

This will acknowledge your inquiry of the 5th instant, which reads as follows:

"The County Court would like for me to obtain your opinion of the following question.

"Referring to Section 7891 R. S. 1929; and Article 10, Section 22, Constitution of Missouri, authorizing the County Court to levy a special Road and Bridge Tax, for the benefit of a Special Road District, to an amount not to exceed 25 cents on the one hundred dollars valuation, which levy is in addition to the levy made for County Road and Bridge fund authorized by Sec. 11, Article 10 of the Missouri Constitution, and Sec. 7890, R. S. 1929.

"In this county there has been for the last 15 years or so a levy of 10¢ on the hundred dollars valuation, made by the County Court, for all Special Road Districts. There are now one or two Special Road Districts in the county which desire to have the levy for their districts raised to as much as 15 or 20 cents on the hundred dollars; that is the Commissioners of the district desire it to be raised.

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"The question is: Has the County Court authority to raise the levy for such districts, to 15 or 20¢ on the hundred dollars valuation, on the request of the Special Road District Commissioners, if the Court in its discretion feel that it should be so raised?

"In other words, is the County Court authorized, to levy a certain amount for one special road district; and a greater amount for another district, as in their discretion they deem proper, merely upon the request of the commissioners of such special road district?"

The question presented by your letter is, "can the County Court, merely upon the request of the Commissioners of a Special Road District, levy a special road and bridge tax for that district different from the tax levied for other portions of the county"?

The suggestion of a tax in one special road district different from that in other portions of the same county directs our attention to Section 3, Article X of the Constitution of Missouri, which reads as follows:

"Taxes may be levied and collected for public purposes only. They shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and all taxes shall be levied and collected by general laws."

Definite provision as to uniformity requires uniformity throughout the taxing district. The rule has been stated thus:

"Uniformity of taxation, as provided for by state constitutions, is required throughout the territorial limits of the taxing district. If the tax is a state tax, it must be uniform throughout the state. If the tax is a

county tax, it must be uniform throughout the county. If the tax is a town tax, it must be uniform throughout the town. If the tax is a city tax, it must be uniform throughout the city. If the tax is a school tax, it must be imposed throughout all the school district. The uniformity corresponds to the territorial limits of the taxing district."

- Cooley Taxation, Vol. I  
p. 645-646.

The question which naturally follows is, "what is the authority levying the special road and bridge tax, and what are the territorial limits of that authority"? In other words, what is the taxing district, the county or the special road district?

The provision for the levying of the tax inquired about is Section 22, Article X of the Constitution of Missouri, which reads 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, 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."

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It will be seen that this provision expressly grants to the county court the power to levy this additional tax for road and bridge taxes. No mention is made of road districts. The tax is a county tax. In discussing this provision of the Constitution, the Supreme Court, in the case of State ex rel vs. Pemiscot Land & Cooperage Company, 295 S. W. 78; 317 Mo. 1.c. 45, said:

"It will be noted that this section of the Constitution, in plain and simple language, provides, in addition to taxes authorized to be levied for county purposes (under Sec. 11, Art. 10, Const.), that the county court may levy and collect, as state and county taxes are collected, a special tax of not more than twenty-five cents on each one hundred dollars' valuation, to be used for roads and bridges, but for no other purpose whatever; and the power thus conferred on the county courts is declared to be discretionary. This is an express grant of power to the county courts, and is a limitation of the power of the Legislature; a power granted to the county courts to levy and collect a special tax for road and bridge purposes. The Legislature, in 1909, passed an act in almost the identical language of this section of the Constitution, purporting to enforce this section of the Constitution. (Sec. 10842, R. S. 1909; now Sec. 10683, R. S. 1919.) This section of the Constitution is self-enforcing, and the courts may fix the rate within the limitation, and levy and collect taxes under said section without the aid of legislative enactment."

The foregoing case clearly holds that this constitutional provision is an express grant of power to the

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county court and that the provision is self-enforcing. That being true, the county courts, under authority of this section, can levy this particular tax, and they are therefore the taxing authority. The tax would be a county special road and bridge tax. How the tax should be disbursed is not provided for in this section of the Constitution. The Legislature, however, has passed a law, being Section 7891, R. S. Mo. 1929, which, after providing for the levy of the tax (which provision, according to State ex rel. vs. Pemiscot Land & Cooperage Company, supra, is unnecessary) provides further as to how the money raised by the tax shall be disbursed. Said provision reads as follows:

" \*\* 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;

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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 Supreme Court of this state has held that the Legislature could provide the manner of disbursement of the funds raised by this tax. In discussing the foregoing section of the statutes, in the case of State ex rel. vs. Burton, 266 Mo., l.c. 719, the court said:

"The legislative power to tax being inherent, the creation of agencies or instrumentalities for the levy, collection and disbursement of such taxes follows as a necessary consequence, and hence the right of the Legislature to enact a law delegating, in this case, the disbursement of the taxes collected to a board of commissioners of a special road district, is not an improper exercise of such power."

We gather from the foregoing authorities that the tax inquired about is a county road and bridge tax to be levied by the county court under authority of Section 22, Article X of the Constitution of Missouri, and that it is only in the disbursement of the proceeds of the tax that the Commissioners of the special road district have any say. Section 7891, supra, clearly shows that the Legislature considered the tax as a county tax, for said section provides that the proceeds of said tax arising from and paid from 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."

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The tax is a tax upon all the taxable property in the county. That being true, the tax rate would have to be the same over the entire county, in order to meet the requirement of uniformity as set forth in Section 3, Article X of the Constitution. The taxing authority is the county court, and therefore all property subject to the tax within the entire county must be subject to the same rate, since the territorial limits of the taxing authority is the county.

It might be suggested that if the people of any special road district desire to pay a higher tax for road purposes than the tax levied by the county court for the entire county, they may, by special vote, authorize the county court to levy a special tax of not to exceed 50¢ on the \$100.00 valuation upon the property of their district.

Section 23, Article X, Constitution of Missouri, provides as follows:

"In addition to the taxes now authorized to be levied for county purposes, under and by virtue of section 11 of article 10 of the Constitution of this State, and in addition to the special levy for road and bridge purposes authorized by section 22 of Article X of the Constitution of this State, it shall be the duty of the county court of any county in this State, when authorized so to do by a majority of the qualified voters of any road district, general or special, voting thereon at an election held for such purpose to make a levy of not to exceed fifty cents on the one hundred dollars valuation on all property within such district, to be collected in the same manner as state and county taxes are collected, and placed to the credit of the road district authorizing such special levy. It shall be the duty of the county court, on petition of not less

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than ten qualified voters and taxpayers residing within any such road district, to submit the question of authorizing such special election to be held for that purpose, within twenty days after filing of such petition."

The Constitution, therefore, has made a provision whereby one special road district can raise additional revenue for road purposes by levying a higher tax than other sections of the county pay, but the authority to levy such tax must come from the qualified voters of the district and not from the Commissioners.

CONCLUSION.

It is, therefore, the opinion of this office that the county court cannot levy a higher rate for special road and bridge tax in one special road district than it does in other portions of the same county, upon the request of the Commissioners of such district.

Respectfully submitted

HARRY H. KAY  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
(Acting) Attorney General.

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