

SPECIAL ROAD DISTRICTS: Commissioners of special road districts organized under Article 9, Chapter 42, R. S. Mo. 1929, can not levy tax for maintenance purposes, nor can they divert money raised for payment of interest and bonds to maintenance fund.

January 17, 1938/7

Mr. W. B. Rissler  
Clerk of the County Court  
Sedalia, Missouri



Dear Sir:

This department is in receipt of your letter of some time ago, wherein you requested an official opinion based on the following facts:

"Before certifying the Road Levy, recommended by our Special Road District Commissioners, the County Court will appreciate an opinion from your office in regard to the Road Tax levied by our Special Road Districts for maintenance purposes.

"Pettis County is not a Township Organization and none of the Special Road Districts are organized under Section 8067 (Benefit Assessment): However, the Commissioners of certain Special Districts have certified a tax levy in excess of the amount required for the payments of Bonds and Interest, without a vote by the Inhabitants of the District.

"This levy is in addition to the General Road levy made by the County Court under Sections 7890 and 7891.

"The Railroad Companies contend the levy made by the Commissioners of Special Road Districts in excess

of that required for Interest and Redemption of Bonds, is illegal, unless authorized by a vote of the inhabitants of the District.

"An early opinion will be appreciated in order that we may proceed with the extension of taxes on our 1937 Tax Books."

It is apparent from your inquiry that the special road districts referred to are those organized under the provisions of Article 9, Chapter 42, R. S. Missouri 1929, and this opinion is directed accordingly.

Such districts are creatures of statutes and have only such powers as are expressly granted to them by statute. As was said in Harris vs. Bond Company, 244 Mo. 664, l.c. 695:

"These special road districts are newly-born citizens, dressed by the legislature in their own garbs, and they possess only such authority and rights as are expressly conferred upon them by the statutes of their creation."

Levies for taxes to create funds for the roads and bridges in said districts are provided for as follows:

Section 7890, R. S. Missouri 1929 reads:

"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.'"

Section 22, Article 10, Constitution of Missouri, provides 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."

Section 23, Article 10, 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 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."

Section 8042, R. S. Missouri 1929, provides that all money collected as county taxes for road purposes, or for road and bridge purposes upon property within such special road district shall be credited to the special road district wherein said property is located, and shall be turned over to the commissioners of such special road district.

It will be seen from the above that taxes for road purposes in these special road districts are to be levied by the county court of the county in which said district lies. There is no provision in the law touching these special road districts whereby the districts themselves are authorized to levy taxes for maintaining roads and bridges.

Your inquiry suggests that it is the practice in your county for commissioners of such special road districts to certify to the county court a tax levy in excess of the amount

required for the payment of maturing bonds and accruing interest, with the intention of creating a maintenance fund for said district over and above the amount needed for said interest and maturing bonds. As stated above, the commissioners of said district have no authority to levy any tax. The money necessary to pay accruing interest on outstanding bonds and also to pay maturing bonds of such districts, is provided for by Section 7961, R. S. Missouri 1929, wherein, after providing for an election to test the sense of the voters of such district upon a proposition to issue bonds, it is said:

"If it shall appear that two-thirds of the voters voting at such election on said question shall have voted in favor of the issuance of said bonds, the board of commissioners of the special road district, or the county court, as the case may be, shall order and direct the execution of the bonds for and on behalf of such special road district or township, and shall provide for the levy and collection of a direct annual tax upon all the taxable property in said district or township sufficient to provide for the payment of the principal and interest of the bonds so authorized as they respectively become due. It shall be the duty of the clerk of the board of commissioners on or before the first day of May in each year, or the state auditor immediately thereafter, in case the clerk of the board of commissioners should fail or neglect, on or before the first day of May of each year, so to do, to certify to the county court of the county, or counties, wherein such road district is situated, the amount of money that will be required during the next succeeding year to pay interest falling due on bonds

issued and the principal of bonds maturing during such year. On receipt of such certificate it shall be the duty of the county court, or courts, at the time it makes the levy for state, county, school and other taxes, to, by order made, levy such a rate of taxation upon the taxable property in the road district, in such county or counties, as will raise the sum of money required for the purposes aforesaid."

While it is the duty of the clerk of the commissioners to certify to the county court the amount of money that will be required during the next succeeding year to pay interest falling due on bonds issued and the principal of bonds maturing during such year, yet in the last analysis, the county court is the authority which makes the levy of the tax, and it is the duty of the county court to determine what the amount of such tax should be.

It will be noted from the above portion of the statute quoted that after receipt of the certificate from the clerk of the commissioners of such district, it shall be the duty of the county court to make a levy of such a rate of taxation upon taxable property in the said district "as will raise the sum of money required for the purposes aforesaid". It seems clear that the court should determine the amount of money required for said purposes and that it would not be bound by the amount certified to them by the clerk as being necessary.

The funds derived from the levy, as determined by the county court, as being necessary to pay accruing interest and maturing principal of the bonds of said district, could not be used for maintenance purposes, even though there were an excess left after paying the amount due for that particular year. The funds for the maintenance of roads and bridges of such district are provided for as set forth in the first part of this opinion. The levy for interest and maturing principal of bonds is a special fund raised for a special purpose and could not be diverted to the maintenance of roads and bridges. The general principle as to diversion of tax monies is stated

in 61 C. J. page 1521, para. 2235, wherein it is said:

"Taxes which are set apart by the constitution of the state for particular uses cannot be diverted by the legislature to any other purpose, and neither can funds derived from taxes levied and collected for particular purposes be legally utilized for, or diverted to, any other purpose, some constitutional provisions expressly so providing."

Said Section 7961 above referred to further carries out the provisions of Section 12, Article 10, Constitution of Missouri, wherein it provides as follows:

"That any county, city, town, township, school district or other political corporation or subdivision of the State, incurring any indebtedness requiring the assent of the voters as aforesaid, shall before or at the time of doing so, provide for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof, within twenty years from the time of contracting the same: \* \* \* "

Any excess remaining after payment of the amount due for any year would constitute a sinking fund for the retirement of said bonded indebtedness as it would accrue thereafter.

While it is the duty of the county court to levy only such sum as would be reasonably necessary to pay the accruing interest and maturing principal of the bonds for such year,

yet a taxpayer could not refuse to pay the tax on account of it being excessive, unless he could show that the levy was grossly excessive. As was said in State ex rel Johnson vs. Railroad Company, 315 Mo. l.c. 435, 436:

"Exactions from the people, as taxes or otherwise, in advance of any needs of the government are not only condemned by sound public policy but are violative as well of fundamental rights guaranteed by our organic law. The County Court of Cass County was therefore without power to levy a tax clearly in excess of what could at the time have been reasonably anticipated as necessary to pay the interest and principal of the funding bonds. However, the authority to determine what amount would be necessary for that purpose was vested in it, and unless there was a clear abuse of this discretionary power, its action in the premises cannot be interfered with. In other words, the amount levied must have been so grossly excessive as to constitute, constructively at least, a fraud upon the taxpayers. (St. Louis Electric Bridge Co. v. Koeln, ante, page 424; 3 Cooley on Taxation (4 Ed.) sec. 1031, p. 2088.)"

#### CONCLUSION

It is, therefore, the opinion of this department that the county court of your county should determine the amount of the levy which will be necessary to pay accruing interest and maturing principal of the bonds of such road districts organized

under the provisions of Article 9, Chapter 42, R. S. Missouri 1929, and that where such court finds the amount certified as necessary for said purposes by the clerk of the commissioners of special road districts is grossly in excess of the amount actually needed for said purposes, such county court should disregard the certification of said clerk and determine a levy which will yield the amount actually required.

It is also the opinion of this department that any funds remaining from the levy for interest and maturing principal of said bonds of said districts can not be used as a maintenance fund for said districts, but that the same would constitute a sinking fund for the retirement of the bonded indebtedness of said districts.

Respectfully submitted,

HARRY H. KAY  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
(Acting) Attorney General

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