

ROADS AND BRIDGES: No vote of the people needed to levy
the tax authorized by Section 8067
R. S. Mo. 1929.

March 7, 1939.

Honorable F. M. Brady
Prosecuting Attorney
Benton County
Warsaw, Missouri



Dear Mr. Brady:

This will acknowledge receipt of your letter of
February 25, 1939, which reads as follows:

"I would like to have your opinion
as to whether or not the Commissioners
of a Special Road District, organized
under the provisions of Article 10,
Chapter 42, R. S. of Missouri 1929,
have authority under Section 8067,
R. S. 1929, to levy any taxes, for the
purpose of constructing and maintain-
ing roads in the district, without
submitting the proposition to levy
such taxes to a vote of the qualified
voters of the district.

"The Commissioners of a Special Road
District have certified to the County
Clerk of Benton County a levy of five
cents on the One Hundred Dollars valua-
tion of property in their district for
construction and maintenance purposes,
but such levy has not been approved by
the voters of the district.

"I would like to know if the levy is
legal and should be run on tax books
by the county clerk".

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We have carefully examined all parts of Article 10 of Chapter 42, R. S. Mo. 1929 and find no provision or statement therein which in any way directs or indicates that the Commissioners of those Special Road Districts must have the assent of the voters before they can levy the tax authorized by Section 8067 R. S. Mo. 1929. The only reference made in this Article, to a vote on any taxing proposition, is that mentioned in Section 8068 with respect to voting bond issues. Neither do we find any case in the state where such a proposition has been urged or passed upon.

However, there is another question involved though not directly called for in your letter. You state that the levy made under Section 8067 was "for the purpose of constructing and maintaining roads in the district". In view of this statement, we desire to point out for what purposes the money raised by taxation, for this type of road district, can be expended.

The taxes mentioned in Section 8066 R. S. Mo. 1929, are to be expended as follows:

" * * * All revenue so set aside and placed to the credit of any such incorporated district shall be used by the commissioners thereof for constructing, repairing and maintaining bridges and culverts within the district, and working, repairing, maintaining and dragging public roads within the district and paying legitimate administrative expenses of the district, and for such other purposes as may be authorized by law. * * * "

The tax provided in Section 8067 R. S. Mo. 1929, is to be expended as follows:

"The board of commissioners of any district so incorporated shall have power to levy, for the construction and maintenance of bridges and culverts in the

district, and working, repairing and dragging roads in the district, general taxes on property taxable in the district, and shall also have power and authority and be its duty to levy special taxes for the purpose of paying the interest on bonds when it falls due and to create a sinking fund sufficient to pay the principal of such bonds at maturity; * * * "

The proceeds of bonds issued under Section 8068 R. S. Mo. 1929, are to be expended as follows:

" * * * The proceeds of the sale of such bonds shall be used for the purpose only of paying the cost of holding such election, and constructing, repairing and maintaining bridges and culverts within the district, and working, repairing, maintaining and dragging public roads within the district."

In Harris vs. Bond Co., 244 Mo. l. c. 395, it is said:

"These special road districts * * * * possess only such authority and rights as are expressly conferred upon them by the statutes of their creation."

Thus, we see that the levy made by these Commissioners, under Section 8067, would not be legal if it is for the construction of roads because the above statutes do not authorize the district to raise money by taxation, or any other means, for that purpose.

CONCLUSION

Therefore, it is the opinion of this department that the levy of taxes, authorized by Section 8067 R. S. Mo. 1929,

Honorable F. M. Brady

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is not required to be approved by a vote of the residents of that road district. It is our further opinion no taxes can be levied, under Article 10 of Chapter 42 R. S. Mo. 1929, except for the purposes enumerated therein which do not include construction of roads.

Respectfully submitted,

LAWRENCE L. BRADLEY
Assistant Attorney General

APPROVED:

J. W. BUFFINGTON
(Acting) Attorney-General

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