

COUNTY COURTS:
TOWNSHIP BOARDS:
ROAD AND BRIDGES:
SPECIAL COMMISSIONERS
AND TAXATION:

The seven questions pertaining to
the rights of the county courts,
township trustees and special road
commissioners of taxation for road
and bridge purposes in counties
under township organization.

May 11, 1939

Mr. George B. Kautz
Prosecuting Attorney
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Bethany, Missouri

Dear Sir:

This is in reply to yours of recent date wherein you set out a number of questions to be answered by this department. Since your request is quite lengthy we have divided it and will answer the questions as you have submitted them.

I.

Answering your first question which is as follows:

"Under the present budget law, 1933, and re-enacted in part, 1937, the county court understands, under its classification of expenditures, Class 3, that it has no right to contribute to the upkeep, repair or replacement of bridges in this special road district. Is this correct?"

By Sections 7890 and 7891, R. S. Missouri 1929, means have been provided by which taxes may be levied and collected for the purpose of acquiring, maintaining, building and repairing of roads and bridges in this state. These sections provide 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 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.'

"In addition to the levy authorized by the preceding section, the county courts of the counties of this state, other than those under township organization, in their discretion may levy and collect a special tax not exceeding twenty-five cents on each one hundred dollars valuation, to be used for road and bridge purposes, but for no other purposes whatever, and the same shall be known and designated as 'the special road and bridge fund' of the county: 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; 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."

Section 8042, R. S. Missouri 1929, requires that the taxes collected under Sections 7890 and 7891, supra, shall, on application being made therefor, be turned over to the commissioners of the special road districts containing the property on which such taxes are collected. This section is as follows:

"In all counties in this state where a special road district, or districts, has or have been organized, or where a special road district, or districts, may be organized under this article, and where money shall be collected as county taxes for road purposes, or for road and bridge purposes, by virtue of any existing law or laws, or subsequent law or laws that may be enacted, upon property within such special district, or districts, or where money shall be collected

for pool or billiard table licenses, upon business within such special road district, or districts, the county court shall, as such taxes or licenses are paid and collected, apportion and set aside to the credit of such special road district, or districts, from which said taxes were collected, all such taxes so arising from and collected and paid upon any property lying and being within such special district, or districts, and also one-half of the amount collected for pool and billiard table licenses, so collected from such business carried on or conducted within the limits of such special road district; and the county court shall, upon written application by said commissioners of such special road district, or districts, draw warrants upon the county treasurer, payable to the commissioners of such special road district, or districts, or the treasury thereof, for all that part or portion of said taxes so collected upon property lying and being within such special road district, or districts, and also for one-half the amount so collected for pool and billiard table licenses, so collected from such business carried on or conducted within the limits of such special road district, or districts."

In your request you refer to Section 8039, R. S. Missouri 1929, as authority of the court to appropriate funds to special road districts for certain purposes. This section only applies to special road districts organized under Article IX, chapter 42, R. S. Missouri, 1929. From the cases which are reported it does not seem that the lawmakers, at the time Sections 7890 and 7891, supra, were enacted, contemplated that the taxes

collected under these sections on properties in the road districts would belong to such districts when demanded as ruled in State ex rel. v. Burton, 266 Mo. 711, 182 S. W. 746. Section 8039, supra, was probably included in the Special Road District Act because the lawmakers did not contemplate that all of the taxes collected under Sections 7890 and 7891, supra, on properties in a special road district would go to such special road district.

After it was determined that such taxes would go to the commissioners of the special road district on timely application being made therefor, then we think the lawmakers, when they were considering the County Budget Act, Laws of Missouri, 1933, page 341, especially intended to prohibit any other tax moneys from going to the special road district for the reason that they were getting all of the taxes collected on the properties in their districts and for that reason Class Three of the County Budget Act was inserted which is 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 language of this clause is plain and there is no doubt that the lawmakers intended to prohibit the county court from using any of the other county revenue which is budgeted in Class Three for the purpose of the upkeep, repair or replacement of bridges in special road districts.

Therefore, in answer to your first question we are of the opinion that the county court is not authorized to apportion or use any of the moneys which have been placed in Class Three of the budget for the purpose of upkeep, repair or replacement of bridges in a special road district.

II.

On the second question which you have submitted you make the following statement:

"The county has been making a levy of 30 cents annually over the entire county for all county purposes. In the classification under the budget law, the county apportions .06 for road and bridge purposes. But you will understand that in this special road district the county court, under the present budget law, is of the opinion that it has no right to take any part of this levy for bridge purposes in this special road district."

It appears from the statement which you have made that the county court, in making its levy for county purposes, has included in the levy a tax at the rate of six cents on the one hundred dollars valuation for road and bridge purposes. This tax is authorized by virtue of the provisions of Section 7890, supra. The tax for road and bridge purposes under Section 7890, supra, is a part of the county revenue tax. This question was before our Supreme Court in *State to Use of Covington v. Wabash Ry. Co.*, 319 Mo. 302, 305, wherein the court said:

"* * * * * We are, therefore, of the opinion that the levy for road purposes under amended Section 10682 in the instant case was a levy for county purposes within the meaning of the reenacted Section 12865, and that as a matter of construction the ten-percent restriction applies."

Under Section 7890, supra, it is mandatory on the court to make some levy for road and bridge purposes. Under Section 8042, supra, if the court collects the road

and bridge tax on properties in a special road district it is the duty of the court to apportion such taxes to the district including the properties on which the tax is collected, and if application is made therefor by the commissioners of such special road district to turn these taxes over to the commissioners. Therefore, in answer to your second question we will say that the county court not only has a right to, but is required to, turn over to the commissioners the road taxes collected on properties in the special road district provided the commissioners make timely application therefor. In your case it would be the duty of the county court to turn the amount of the taxes raised by the six cent levy for road and bridge purposes which was collected on properties in the special road district.

III.

In answer to your third question on whether or not the special road district is entitled to be reimbursed for the road and bridge taxes, we are enclosing a copy of an opinion dated August 17, 1937, to Honorable L. B. Shuck, Prosecuting Attorney of Shannon County, written by Assistant Attorney General, Mr. Olliver W. Nolen. We think this opinion answers that question except as to whether the application for the moneys by the commissioners is timely. Whether or not the application is timely made would depend upon circumstances. However, for a treatment of this question we refer you to the Little Prairie Special Road District et al. v. Pemiscot County et al., 249 S. W. 599, l.c. 601, which held that the tax must be demanded in the year that it is levied. See also Holloway to Use v. Howell County, 240 Mo. 601.

IV.

Answering your fourth question which is as follows:

"It seems that Section 8039, R. S. 1929, permitting the court to build

bridges in a special road district has been repealed by the budget law, 1933, page 340, and 1937, Page 422, On the matter of upkeep, repair or replacement of bridges in the special road district, and that the county can no longer contribute to these bridges. Is this correct?"

We think this question is answered in Division One of this opinion which holds that the court is not authorized to appropriate any of the funds to special road districts which have been properly placed in Class Three of the budget. If any of the road and bridge taxes collected under Sections 7890 or 7891, supra, are in Class Three of the budget, and if they have been collected on properties in the special road district, then under the holdings in Division Three of this opinion they should be turned over to the special road district if timely application is made therefor.

V.

Your next question which is as follows:

"On the other hand, Section 8042, R. S. 1929, anno. statutes 6842, provided for reimbursing special road districts is not in express terms repealed by the budget law. Does this section 8042 still remain effective, and is the county required to reimburse this special road district thereunder? If so, from what fund or classification will this reimbursement be taken?"

Section 8042, R. S. Missouri, 1929, was not repealed by

the Budget Act. It requires the county court to apportion all taxes collected for road and bridge purposes to the districts to which they belong as they are collected. While the taxes under Section 7890, supra, have been held to be a part of the county revenue (State to Use of Covington v. Wabash Ry. Co., 319 Mo. 302, 305), yet we think that holding was only for the purpose of determining what taxes would be considered in fixing the amount of the levy in order to be within the limitations of the Constitution. Therefore, if the county court has not apportioned the taxes belonging to the special road districts to such districts as they were collected and has placed them in other funds, then it would be the duty of the county court, if timely application for these taxes is made by the commissioners, to take these taxes out of the funds in which they have been wrongfully placed. If they have been placed in Class Three of the budget, then they should be taken out of that class and paid to the commissioners provided the commissioners have made timely application therefor.

VI.

Your sixth question and the statement in relation to it is as follows:

"Included in this special road district are parts of five townships. Harrison county has township organization. These townships make levies that is, i. e., township levies for ordinary road purposes and then a special road and bridge fund. For instance, Hamilton township makes a 20-cent levy for road purposes and a 25-cent levy for special road and bridge fund. Should these township levies include the property of this township that is in this special road district, or should the township levy simply cover the property of the township not in

the special road district? You will understand that the special road district makes a levy of its own for road and bridge purposes. The present levy is 25 cents."

From the statement which you have made in connection with this question it appears that the levies which have been made or are being contemplated to be made by the county court, township board and commissioners of the special road district might be in excess of the levy authorized by Sections 11 and 22 of Article X of the Constitution.

Your inquiry does not go to that question, but from the statement which you have made that there are probably excessive levies, for your information we are enclosing two opinions rendered by this department touching on this subject which might be of some benefit to you in advising the various bodies in the amount of levy that they may make. These opinions are written by Mr. W. W. Barnes to Honorable Forrest Smith, State Auditor, dated July 2, 1934, and Mr. Charles E. Hassett, dated May 3rd, 1939, written by Mr. Drake Watson, Assistant Attorney General.

On the question "Should the township levies include the properties of the township which are in a special road district, or should the township levies simply cover the property of the township in the special road district?" Section 8161, R. S. Missouri, 1929, which relates to the power of the township board to make a levy provides as follows:

"The township board of directors of any township may, annually, in their discretion, at the same time and in the same manner as taxes are now required by law to be levied for county purposes, levy an annual tax in addition to those now authorized by law, in any amount not exceeding twenty-five cents on each one hundred dollars valuation on all prop-

erty subject to taxation in such township, to be known as a special road and bridge fund. Provided 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 order of the township road and bridge fund and be used in construction and maintenance of roads and improving or repairing any street in any incorporated city or village in the township, if said street shall form a part of a continuous highway of said township leading through such city or village."

Another section of the statute authorizing township boards to request a levy for township expenses is Section 12308, R. S. Missouri 1929, which provides in part as follows:

"The township board of directors shall make out an account of the amount of money necessary to defray the township expenses during the next ensuing year; said account shall be made out not more than sixty nor less than twenty days prior to the meeting of the county court at which the assessment for county purposes is made; said account shall be signed by the president of the board, and attested by the clerk, and filed with the clerk of the county court on or before the first day of said court, who shall cause the same to be placed upon the tax books of said township; Provided, that said expenses shall not, together with the amount levied for road purposes and special bridge tax, exceed in any one year twenty cents on the one hundred dollars valuation; * * * *"

It seems that by the two foregoing sections the plan for taking care of the expenses of the township is set out. It will be noted that Section 8161, supra, requires that the levy under that section be made on all property in the township. Section 3, Article X of the Constitution provides 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."

We are, therefore, of the opinion that any tax levied by the township board in order to comply with the foregoing sections and provisions of the Constitution should be on all property in the district. However, we think that the same rule applies to the township board as applies to the county court to turn over to the special road district commissioners, on timely application therefor, the taxes collected for road and bridges and special road and bridge purposes on properties in the special road district.

VII.

Answering your seventh question of your opinion request which is as follows:

"If the township levy should include the property in the special road district, should the township then contribute to or maintain the roads in the special road district? It would seem that if the property in the special road district is subject to levy for township levies and also the general county levy and then has a special tax of its own, all for road

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and bridge purposes, that the property in the special road district has been taxed two or three times for the same purpose."

Having answered in Division Six of this opinion that the taxes levied by the township board should be on all of the properties in the township including those of a special road district, then as stated in the conclusion of said Division Six of this opinion we think that the road and bridge and special road and bridge taxes which are collected by the township board on properties in the special road district should be turned over to the commissioners of the special road district if timely application is made therefor.

In conclusion we will say that if the sections of the statutes hereinbefore set out are followed by the county court, township board and special road district commissioners, the taxes levied and collected therefor will be within the constitutional provisions of Sections 11 and 22 of Article X of the Constitution.

Respectfully submitted

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APPROVED:

J. E. TAYLOR
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