

ROADS AND BRIDGES:
SPECIAL ROAD DISTRICTS:
PROPERTY SUBJECT TO TAX:
DISTRICT FUNDS EXPENDED;
WHERE:

Special road districts organized under Art. IX, chap. 42, R.S. Mo. 1929, are not authorized to make levies for road and bridge purposes. Cities located in a special road district are not exempt from the general levies for road and bridge purposes. Special road district funds to the amount of 25% of the amount collected in a city may be expended by the commissioners on the streets in such city.

March 27, 1939

Mr. Charles E. Murrell, Jr.
Prosecuting Attorney
Adair County
Kirksville, Missouri



Dear Sir:

This is in reply to yours of recent date wherein you request an official opinion from this department pertaining to special road districts and the taxes and how such taxes shall be expended. You have set out a number of questions in your request, but we will give you the general principles of the law on this subject and then answer your questions in the order that they have been submitted.

You state in your request that the special road district to which you refer has been created by the authority of Article IX, chapter 42, R. S. Missouri, 1929. These districts are commonly termed eight-mile special road districts.

Since such districts are created by the statute their officers must look to that statute for their powers and duties. I note in your request that you state that the commissioners have levied a certain tax by virtue of the provisions of Section 8067, R. S. Missouri, 1929. You will note that that Section is included in Article X, chapter 42, R. S. Missouri, 1929, under which special road districts, with benefit assessments, are created. This Section does not apply to your special road districts which were created under Article IX of that chapter, therefore, your commissioners are not authorized to make a levy under authority of that Section.

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The lawmakers have provided by Sections 7890 and 7891, R. S. Missouri, 1929, for the raising of the revenue for road districts. Section 7890, supra, authorizes a levy on all real and personal property in the county. Such levy shall not exceed twenty cents on the one hundred dollars valuation. This is for the fund known as the county road and bridge fund. Section 7891, supra, authorizes a levy not exceeding twenty-five cents on the one hundred dollars valuation on all real and personal property in the county. This fund is known as "the special road and bridge fund."

In State ex rel. Road District v. Burton, 283 Mo. 41, it has been held that the road taxes received by virtue of the two foregoing levies shall be turned over to the commissioners of such road district provided timely application therefor has been made by such district.

Coming to your questions in the order that you have submitted them. In answer to Question 1 which is as follows:

"Is the order of the State Auditor correct, in other words is the special road district a special tax unit or must the tax be uniform over the entire county. May the special road district legally levy a tax at a less or greater rate, at least a different rate from that paid by the remaining part of the County."

will say that since we have held above that the special road district is not authorized to make a levy, then the only levy which can be made for road and bridge purposes is that authorized to be made by the county court by virtue of the provisions of said Sections 7890 and 7891 which require the levy to be made on all real and personal property in the county.

Answering Question 2 of your request which is as follows:

"Is the property within the corporate

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limits of the City of Kirksville,
subject to a general county road
tax."

will say that since said Sections 7890 and 7891 require the levy to be made on all taxes, real and personal, in the county, then the property within the corporate limits of the City of Kirksville could not be excluded from this levy. This would be in violation of the provisions of Section 3, Article X of the Constitution of Missouri, which is 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."

The only property in the county which is exempt from the levy authorized by said Section 7890 and 7891 is that listed under Section 6, Article X of the Constitution of Missouri, which is as follows:

"The property, real and personal, of the State, counties and other municipal corporations, and cemeteries, shall be exempt from taxation. Lots in incorporated cities or towns, or within one mile of the limits of any such city or town, to the extent of one acre, and lots one mile or more distant from such cities or towns, to the extent of five acres, with the buildings thereon, may be exempted from taxation, when the same are used exclusively for religious worship, for schools, or for purposes purely charitable; also, such property, real or personal, as may be used exclusively for agricultural or horticultural societies: Provided, That such exemptions shall be only by general law."

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Answering Question 3 of your request which is as follows:

"Is the property within the incorporated limits of the City of Kirksville, subject to a special road district tax levied if the one attempted to be levied has been by the Commissioners of the Special Road District or the County Court."

will say that by virtue of the foregoing statements the property within the incorporated limits of the City of Kirksville is subject to the "special road and bridge tax" and the "general road and bridge tax" levied by virtue of the provisions of said Sections 7890 and 7891, but since the commissioners of the special road districts are not authorized to levy a special road district tax, then the property within the limits of the City of Kirksville or within the special road district would not be liable for the payment of the tax for it is levied without authority and is void.

In answer to your Question number 4 which is as follows:

"Are the Commissioners of the Special Road District, if privileged to levy it, privileged to assess against that part of the property in the district lying outside the city and not extending the same against the property within the city."

will say that since we have heretofore ruled that the commissioners of special road districts are not authorized to make a levy of this tax, then there would be no authority to assess the tax against any property in the district whether it is within the corporate limits of a city or not.

In answer to Question 5 which is as follows:

"Property lying within the incorporated limits of the city subject to the gener-

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al levy of the County assessed for bush and weed tax, bridge and road tax, and if so must said funds be delivered to the Special Road District or may they be spent outside of the Special Road District."

we find that Section 8042, R. S. Missouri, 1929, provides 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 commis-

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sioners 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."

As heretofore stated if the county court makes the levy under said Sections 7890 and 7891, then all the property in the county is subject to the payment of these taxes and if the commissioners of the special road district make timely application for that portion of said taxes which is raised from property in their special road district, then it is the duty of the county court to turn that money over to the commissioners of the district.

Answering Question 6 of your request which is as follows:

"Under Section 8034, R.S. Mo. 1929, may the Special Road District deliver funds not to exceed 25% to the City Council and allow them to spend these funds on the streets of said incorporated city or must said funds be actually expended by the district. Is it mandatory for the Special Road District to spend funds in the sum of 25% within the incorporated city."

Section 8034, R. S. Missouri, 1929, authorizes the commissioners of the special road district to expend for the purpose of grading and repairing streets in corporate limits of the city of the district.

You ask the question whether or not it is mandatory on the commissioners of the district to expend this one fourth of its revenue within the corporate limits of a city. In answer to that we will say that it is not mandatory, and this is a matter which is entirely within the discretion

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of the commissioners of the district how much of the road fund they will expend on the streets in a city.

In answer to Question 7 which is as follows:

"If the Commissioners of the Special Road District do vote a levy on all of the property within the district and deliver it to the County Court with the request that the same be ordered extended as a tax, does the County Court have any discretion in the matter or is it obligatory upon the Court to make the extension."

will say that since the commissioners of the special road district are not authorized to make a levy for road and bridge purposes, then the county court is not required to nor authorized to extend a tax on such levy.

Respectfully submitted

TYRE W. BURTON
Assistant Attorney General

APPROVED:

W. J. BURKE
(Acting) Attorney General

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