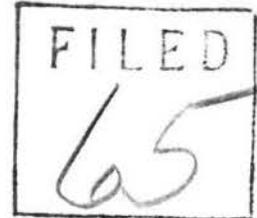


TAXATION:
ROAD AND BRIDGE LEVY AND
BUDGET ACT:

All road and bridge taxes collected on properties in special road district should be paid to the special road district on demand even though such taxes are apportioned as provided by the County Budget Act.

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

Dear Sir:

This is in reply to yours of recent date wherein you submit the following questions:

"1. Is the revenue received by the county under the provisions of the laws of Missouri, pertaining to class 3 to be delivered to the Commissioners of the road district in accordance with the proportional part of the levy received from the special road district?

"2. Is the revenue received by the county and set aside for use in accordance with the provisions of class 3, Section 2, of the County Budget Statutes Session Acts 1933, to be used by the county for the repair and replacement of bridges in the county outside of the special road district from which part of the money has been received?

The court order pertaining to your question which you submitted is as follows:

"Order No. 2

"In Re: County Levy for 1938.

"It is ordered by the County Court of Adair County, Missouri, on this 2nd

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day of May, 1938, it being the first day of the Regular May Term, 1938, that a levy of fifty cents (.50¢) per one hundred dollars (\$100.00) valuation be extended against all real estate and personal property within the boundaries of Adair County, Missouri, according to Section 9871 and 9873, Revised Statutes of Missouri, 1939, and apportioned to the classifications as follows:

"Class No. 1, four cents (.04¢) per one hundred dollar valuation.
Class No. 2, seven cents (.07¢) per one hundred dollar valuation.
Class No. 3, ten cents (.10¢) per one hundred dollar valuation.
Class No. 4, fifteen cents (.15¢) per one hundred dollar valuation.
Class No. 5, eleven cents (.11¢) per one hundred dollar valuation.
Class No. 6, three cents (.03¢) per one hundred dollar valuation.

"It is so Ordered."

The copy of this court order, fixing the levy for county revenue, shows that the county court fixed the levy for such purposes at the maximum amount as is authorized by the provisions of Section 9873, R. S. Missouri, 1929, which section provides in part as follows:

"For county purposes the annual tax on property not including taxes for the payment of valid bonded indebtedness or renewal bonds issued in lieu thereof shall not in any county in this state exceed the rates herein specified: * * * * * in counties having ten million dollars and not exceeding thirty million dollars said rate shall not exceed fifty cents on the one hundred dollars valuation, * * * * *"

The official records show that your county comes within the brackets of ten million to thirty million dollars in valuation, therefore, a levy of as much as fifty cents on the one hundred dollars assessed valuation may be made for county revenue purposes. Section 7890, R.S. Missouri, 1929, which pertains to the levy that the county court is required to make for road and bridge purposes, is 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.'"

This section, prior to its amendment in 1921, fixed a minimum of ten cents on the one hundred dollars valuation which the court was required to levy, but since the amendment, the minimum is removed and only the maximum remains, but it is mandatory upon the court to make some levy under this section.

Section 8042, R. S. Missouri, 1929, which relates to the road and bridge taxes collected on properties in special road districts, provides in part 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

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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 ; * * * * "

The two foregoing sections have been before our appellate courts on many occasions and every time it has been held that all taxes for road and bridge purposes collected on properties in a special road district belonged to the district and must be turned over to such district upon timely application being made therefor.

The levy authorized by Section 7890, supra, is a part of the levy for county revenue purposes, and the amount of this levy plus whatever other levy the court may make for county revenue purposes must not exceed the levy authorized by Section 7893, supra, which in your case is fifty cents on the one hundred dollars assessed valuation.

This question was before our Supreme Court in State to Use of Covington v. Wabash Ry. Co., 319 Mo., 302, l.c. 305, wherein the court said:

"* * * * We are, therefore, of the opinion that the levy for road purposes under amended Section 10682 (which is now Section 7890, R. S.

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Mo. 1929) in the instant case was a levy for county purposes within the meaning of the reenacted Section 12865, (which is now Section 9873, R. S. Mo. 1929) and that as a matter of construction the ten-per-cent restriction applies."

Section 9871, R. S. Mo. 1929, provides as follows:

"As soon as may be after the assessor's book of each county shall be corrected and adjusted according to law, the county court shall ascertain the sum necessary to be raised for county purposes, and fix the rate of taxes on the several subjects of taxation so as to raise the required sum, and the same to be entered in proper columns in the tax book."

Since it has been held in the Wabash R. R. case, supra, that the levy required by Section 7890, is a levy for county purposes, and since Section 9871, supra, requires the court to ascertain the sum necessary to be raised for county purposes, and since we must presume that the court, in fixing this levy, performed its duties as required by law, it naturally follows that when your court was making this levy for county purposes it intended to include in that levy the amount of tax required to be raised for road and bridge purposes as required by said Section 7890. It was mandatory on the court to make the levy for road and bridge purposes as required by said Section 7890, and since it made the maximum levy for county purposes as authorized by Section 9873, supra, then assuming that the court was performing its duty as required by law, it has included in the fifty cent levy for county purposes the levy required by Section 7890, supra.

The making of the levy and the apportionment of taxes is provided for by different sections.

It will be noted that the court made the fifty cent levy for county revenue purposes and the only way we have

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to determine what part of the levy was intended for road and bridge purposes is to look to that part of the court order directing that ten cents on the one hundred dollars valuation of the tax for county revenue be apportioned to class 3 of the Budget Act.

Section 2 of the Budget Act, page 341, Laws of Missouri, 1933, provides as follows:

"The court shall classify proposed expenditures in the following order.

* * * * *

"Class 3: 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."

While the County Budget Act requires the court to set aside and apportion the amount required for Class 3, the court, under Section 8042, supra, must also set aside the amount of the county revenue required to be levied for road and bridge purposes by said Section 7890, and on demand turn it over to the special road districts which contain the property upon which said tax has been collected.

If all the taxes collected under the ten cent levy were set aside to Class 3 of the Budget Act, the provisions of Sections 7890 and 8042 would be meaningless because the county court could ignore the provisions of said sections and place all of these taxes in Class 3 of the Budget Act. This would have the effect of repealing Section 7890 by implication and defeating its purpose and as a result thereof the special road districts would be abolished and we do not think the lawmakers had any such intention when they passed the Budget Act.

It is a general rule of statutory construction that where two statutes can be given a construction which will

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uphold both of them it must be done. This rule is stated in *State ex rel. Halsey v. Clayton*, 226 Mo. 292.

Considering Sections 7890, 8042, 9871, 9873 and Class 3 of Section 2 of the Budget Law, we think that the lawmakers intended that the county court apportion from county revenue to Class 3 only that part of the levy for road and bridge purposes which it is authorized by law to set aside or apportion for that purpose.

As stated above the court must turn over to the special road districts on timely application therefor all of the road and bridge taxes collected on properties in such districts, and since Section 7890, supra, makes it mandatory on the county court to make some levy for road and bridge purposes which is a part of the county revenue levy, the county court would, therefore, be prohibited from placing in Class 3 under the Budget Act any of the county revenue tax collected for road and bridge purposes on properties in a special road district.

Finally this leads to the question: "Did the county court include in the fifty cent levy for county revenue purposes the tax required by Section 7890?" If it did do that, then that part of the tax paid on properties in a special road district on timely application therefor must be turned over to the district.

In this connection we again quote the following law and facts:

1. Section 7890 makes it mandatory on the court to levy some tax not exceeding twenty cents for road and bridge purposes.

2. The tax required by Section 7890 is a part of the county revenue tax.

3. The county court has levied the maximum amount for county revenue purposes.

4. With the presumption that the county officers perform their duties as required by statute, we must assume that the county court, when making this levy, included the

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levy for road and bridge purposes.

5. The court has indicated that ten cents on the one hundred dollars valuation of the levy shall go to Class 3 of the Budget Act.

With the foregoing statements of fact and law in mind, we think that the court order apportioning to Class 3 of the Budget Act ten cents on the one hundred dollars valuation of the county revenue levy can only include that part of the levy which the county court is authorized to apportion. It would not include that part of the ten cent on the one hundred dollars valuation of the levy which was required to be raised for road and bridge purposes and collected on properties in special road districts.

CONCLUSION.

From the foregoing and in answer to your first question, will say it is the opinion of this department that that part of the taxes which you have collected under your levy and apportioned to Class 3 which have been collected on properties in a special road district, should be turned over to the commissioners of such special road district.

Answering your second question, we think that when the lawmakers wrote into Class 3 of the Budget Act the clause prohibiting the county court from expending any of the moneys of this class in special road districts, that such districts were entitled to all of the revenue raised for road and bridge purposes and included in the county revenue levy on properties in their districts and for that reason the lawmakers prohibited such districts from claiming or getting any more of the levy. For that reason no part of the taxes which are legally apportioned to Class 3 of the county revenue may be paid to special road districts.

Respectfully submitted,

APPROVED:

TYRE W. BURTON
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(Acting) Attorney General

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