

ROADS AND BRIDGES: Special road districts must pay the same rate of levy for the county generally as other road districts. Surplus in special road districts cannot be returned to the county court and can only be used for road and bridge purposes.

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April 28, 1941

Honorable Marion R. Garstang  
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Osage County  
Linn, Missouri



Dear Sir:

We are in receipt of your request for an opinion from this department under date of April 1, 1941, which reads as follows:

"The County Court of Osage County, Missouri, desires an opinion on the following:

"A special road district organized under Section 8710 et seq. Article 11, Chapter 46, R. S. 1939, originally had a substantial amount of roadway to maintain. Lately, a state road has been built through the district which at the present time is being maintained entirely by the State. The State road followed the only road which ran through the district with the result that at the present time there is only about 200 or 300 feet of public road in the whole district other than the State maintained road. The district is a rather wealthy district and the amount of the county levy for road and bridge purposes when extended into the district provides a revenue of several hundred dollars. The district has more money than it can spend on its few hundred feet of road.

"1. Can the road district in any way levy less tax than the amount of the

levy for the county generally. The county levies 25 cents on the hundred dollars valuation, which we understand must be extended into the district. Can the district pay less than this amount of tax, since it is not needed.

"2. If the district pays the amount of taxes extended into the district on the basis of the county levy, and a surplus accumulates each year, can the county court acquire title to this surplus in any way.

"3. If the surplus money should be spent in the Special Road District by the Commissioners thereof, in a manner which the county considered illegal, does the county court have any right to question what is done with the money.

"4. Assuming that the Special Road district has funds on hand each year which it does not spend on its public roads and which are not needed on its public roads, what can be done with these funds by the district."

Your first question reads as follows:

"1. Can the road district in any way levy less tax than the amount of the levy for the county generally. The county levies 25 cents on the hundred dollars valuation, which we understand must be extended into the district. Can the district pay less than this amount of tax, since it is not needed."

The statutes and constitutional provisions applicable to all four questions will be set out in answer to your first question.

Section 8715, R. S. Missouri 1939, partially reads as follows:

"County courts shall levy a poll tax in every district so incorporated, the same as required by law in road districts not incorporated, and such commissioners shall perform the duties, relative to such poll tax, that are imposed by law upon road overseers relative to the poll tax in road districts that are not incorporated; and county courts shall levy on the property taxable in every such incorporated district such taxes as may be levied by the authority of section 8526 on property taxable in districts not incorporated, and such taxes when so collected shall be set aside to and placed to the credit of the district in which the property was taxable; and county courts shall cause to be set aside and placed to the credit of each road district so incorporated all taxes collected, on property taxable therein, by authority of sections 8527 and 8821, R. S. 1939, or either of said sections,  
\* \* \* \* \*

Under the above partial section, when taxes are collected from any special road district, they should be set aside and placed to the credit of the district in which the property was taxed.

Section 8526, R. S. Missouri 1939, provides that in counties having a population of less than two hundred fifty thousand inhabitants the county court shall levy upon real and personal property of a county a tax of not more than twenty cents on the one hundred dollars valuation. This tax, when collected, must be placed in the county road and bridge fund. It is mandatory upon the county court to place this tax in the county road and bridge fund and cannot be used for any other purpose.

Section 8526, R. S. Missouri 1939, follows Section 11

of Article X of the Constitution of the State of Missouri.

Section 8527, R. S. Missouri 1939, provides for the collection of an additional tax other than that levied under Section 8526. The limitation under Section 8527, supra, is twenty-five cents on each one hundred dollars valuation, to be used for road and bridge purposes, and specifically provides:

"\* \* \* but for no other purposes whatever, and the same shall be known and designated as 'the special road and bridge fund' of the county:\* \* \* \* \*"

Section 8527, supra, follows Section 22, Article X of the Constitution of the State of Missouri.

In your first question you ask--Since the special road district cannot use the money allotted to it from the county treasury, can the district pay less than the amount of the tax since it is not needed?

Section 3, Article X of the Constitution of Missouri reads 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."

Under the above section of the Constitution the county court would be prohibited from levying a higher tax in other districts other than the district in which you inquire about, and for that reason the levy for taxes must be uniform.

The taxes collected in the special road district must be allocated upon written demand to the district where the property is taxed. In the case of Hawkins et al. v. Cox et al., 66 S. W. (2d) 539, par. 1, 2, the court, in its

opinion, said:

"\* \* \* Under these and other statutes referred to, it is settled that this special road district is entitled to whatever taxes are levied and collected on property within its boundaries, whether levied by the road district itself under section 8067 (Mo. St. Ann. section 8067, p. 6858), or by the county court under sections 7890 and 7891, R. S. 1929 (Mo. St. Ann. sections 7890, 7891, pp. 6765, 6766). State ex rel. v. Barry County, 302 Mo. 279, 258 S. W. 710; State ex rel. v. Holman, 305 Mo. 195, 264 S. W. 908; Billings Special Road District v. Christian County, 319 Mo. 963, 5 S. W. (2d) 378. \* \* \* \* \* "

Also, the court said at page 545:

"\* \* \* It cannot restrain the district from levying taxes or receiving and using the taxes levied by the county court on the property within the district. Such taxes are levied and collected not for any particular purpose, but for the general purpose of constructing, improving, and keeping in repair the roads, bridges, and culverts within the road district, and such district has the right to use this revenue to rent, lease, or buy teams, implements, tools, and machinery, motor power, and all things necessary to carry on such work, subject to the constitutional and statutory restrictions in so doing. The board of commissioners in authority during any year must be left free to contract and spend the revenues provided for that year unhampered by the contract in question."

Also, in Rolla Special Road Dist. of Phelps County

v. Phelps County, 116 S. W. (2d) 61, par. 1, the court said:

"\* \* \* This second count was based upon a levy made pursuant to section 7891, R. S. Mo. 1929, Mo. St. Ann. section 7891, p. 6766. Section 7890 reads 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." (R. S. 1919, section 10682. Amended, Laws 1921, 1st Ex. Sess., p. 172.)' The funds collected under a levy made by authority of the above section must be paid over to the special road districts in which the funds were collected. State ex rel. v. Burton, 283 Mo. 41, 222 S. W. 844; State ex rel. v. Barry County, 302 Mo. 279, 258 S. W. 710. Appellant does not dispute the correctness of this rule and we will not give it further consideration."

Under the holding in the above case it is the duty of the county court, upon written demand, to turn the taxes over to the special road district that are collected in the county upon the property in the special road district. The court also specifically holds that these taxes levied and collected are for the general purpose of constructing, improving and keeping in repair the roads and bridges and culverts within the road district and to further rent, lease and do other things necessary in the construction of the roads and bridges.

It is, therefore, the conclusion of this department that the special road district that you describe cannot pay a less amount of tax than any other district in the county even though it is impossible to spend the amount of tax re-allocated to that district.

Your second question reads as follows:

"2. If the district pays the amount of taxes extended into the district on the basis of the county levy, and a surplus accumulates each year, can the county court acquire title to this surplus in any way."

We find no law which would allow the county court to acquire title to the surplus left in the special road fund in a direct manner. By an indirect manner the county court may keep the taxes that should be allocated to the special road fund where no written demand is made by the special road district for the allocation of the taxes collected in the district. This will be more fully explained in answer to your fourth question.

Your third question reads as follows:

"3. If the surplus money should be spent in the Special Road District by the Commissioners thereof, in a manner which the county considered illegal, does the county court have any right to question what is done with the money."

In answer to this question will say that the taxes collected under Sections 8526, 8527 and other sections are for the specific purpose of the maintenance of roads and bridges and are placed in the special account known as "the special road and bridge fund." If the county court, or anyone in charge of this fund, should spend this money for any other purpose, they would be liable on their bond and anyone contracting for any other purpose than road and bridge work with the county court would do such work or furnish such property at their own risk.

In the case of Mullins v. Kansas City, 188 S. W. 193, par. 5, the court said:

"But, be this as may be, it is plain that to allow such a doctrine upon a contemporaneous matter to be successfully asserted in the teeth of a statute which forbids, and of which statute plaintiff must be held to know, would be against public policy. Statutes and charter provisions constitute powers of attorney to the officers of municipalities, beyond which such officers may not go. Those dealing with such agents of municipalities must be held to know these statutory and charter powers, which effectually limit such officers' powers and radius of action. Officers of municipalities are not general agents; they are special agents, whose duties are set forth in the statutes which create them and which define their powers, and of these statutes, and therefore of these officers' powers, the public which deals with them must take notice and govern themselves accordingly. Lamar Tp. v. Lamar, 261 Mo. 171, 169 S. W. 12; Morrow v. Surber, 97 Mo. 155, 11 S. W. 48. Vain and futile would Constitution and statutes and charter be, if any officer of the state, or of a county, or of a city or other municipality, could follow them only when he saw fit.

\* \* \* \* \*

Under the holding in the above case it specifically states that the public dealing with officers must know their powers and must take notice and govern themselves accordingly. Not only the county court but also any taxpayer could question the right to use the money unless it was used for the purposes for which it was collected.

Your fourth question reads as follows:

"4. Assuming that the Special Road district has funds on hand each year which it does not spend on its public roads and which are not needed on its public roads, what can be done with these funds by the district."

We do not find any authority which would permit a special road district to transfer the money allotted to them for road and bridge work to any other office of the county. Under Section 8691, R. S. Missouri 1939, it provides for the return of the money collected and then allocated to the special district where the property was taxed and it specifically states:

"\* \* \* \* 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 the above partial section it will be specifically noted that the county court shall set aside to the credit of such special road district the money for taxes collected upon the property in that district upon written application by said commissioners of such special road district. It has been held that where no written application has been made for the taxes to be apportioned to the special road district that it is not necessary for the county court to allot the money to that district. In the case of Little Prairie Special Road

Dist. v. Pemiscot County, 249 S. W. 599, par. 1, this court has said:

"The statute formerly provided (sections 10481 and 10594, R. S. 1909; Laws 1913, pp. 667, 675), and still provides (section 10818, R. S. 1919), that the part of the general county levy which is set apart for road and bridge purposes and which is assessed and collected on property within a special road district, together with a designated part of certain licenses, shall be placed to the credit of such special road district and paid out to the commissioners or treasury of that district 'upon written application by said commissioners.' Carthage Special Road District of Jasper County v. J. C. Ross et al., 270 Mo. loc. cit. 82, 192 S. W. 976."

It has also been held that a district failing to demand such funds for several years cannot recover from the county. That was the holding in Holloway v. Howell County, 240 Mo. 601, 144 S. W. 860, and State ex rel. v. Holman, 305 Mo. 204, 264 S. W. 908.

#### CONCLUSION

In view of the above authorities it is the opinion of this department that one special road district, even though it cannot spend the money allotted to it for road and bridge purposes, must pay the same rate of levy as other districts in the county.

It is further the opinion of this department that the county court cannot acquire title to any surplus of money held by a special road district for road and bridge purposes.

It is further the opinion of this department that

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the commissioners of a special road district can only use the money allotted to the district as a road and bridge fund, for the purposes for which the taxes were levied, and that if the money is used for any other purpose the officer or officers using the money so illegally would be liable on their bonds.

It is further the opinion of this department that any surplus must be kept by the commissioners of a special road district but that it is not mandatory for them to make a written demand upon the county court for the taxes for road and bridge purposes that could be allocated to that district.

Respectfully submitted

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APPROVED:

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