

ROADS AND BRIDGES: County treasurer can protest warrants against  
COUNTY BUDGET: special road and bridge fund of any road  
district but not the county road and bridge  
fund.

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December 30, 1941

Honorable Conn Withers  
Prosecuting Attorney  
Clay County  
Liberty, Missouri



Dear Sir:

We are in receipt of your request for an opinion from this department under date of December 22, 1941, which is as follows:

"The County Clerk of Clay County, Missouri has received a letter from the office of the State Auditor under date of December 16, 1941 which reads as follows, in part:

"The budget for 1942 is to be made under the same provisions as in the past, with the exception of class three. Effective for the 1942 budget, class three will carry all of the road and bridge money of the county. (Laws of Missouri, 1941, page 651). The revenue to be budgeted in class three will be the anticipated revenue to be derived for the use of the county from the levies made under Sections 8526 and 8527, R. S. Missouri, 1939."

"I recall it has been held by your Department that counties, such as Clay, which are on a cash basis as to all of the budget operations, might protest warrants against the Special Road and Bridge Fund for the reason that it was considered that such Fund was not administered under or through the budget, having a constitutional and statutory

origin prior to the adoption of the budget law.

"If the above quoted paragraph of the State Auditor's letter means that this condition is no longer true, it will create a most serious emergency in this County by destroying the County's right to protest warrants and would stop the County's work out of this Fund for about eight months out of the year.

"I would appreciate an expression of the opinion of your Department as to whether or not the laws mentioned by the State Auditor, being Laws of Missouri, 1941, page 651, changing the budget law classification, will operate to bring the Special Road and Bridge Fund under the jurisdiction of the budget account, or whether the original opinion of your Department that such Road and Bridge Fund is exempt from the requirements of the budget account irrespective of the amendment above mentioned still stands.

"Since the budget must soon be taken up and completed, you will understand the wish of the County Court to have this expression of your opinion as quickly as conveniently possible."

Class 3 of Section 10911, R. S. Missouri 1939, provides as follows:

"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."

It will be noticed under the above partial section

that it only refers to the upkeep and repair of bridges but also excludes bridges on state highways and bridges not in any special road district. Class 3, as repealed and reenacted in the Laws of 1941, page 651, provides as follows:

"Class 3. The county court shall next set aside and apportion the amount required, if any, for the upkeep, repair or construction of bridges and roads on other than state highways (and not in any special road district). The funds set aside and apportioned in this class shall be made from the anticipated revenue to be derived from the levies made under Sections 8526 and 8527 R. S. Mo. 1939. This shall constitute the third obligation of the county."

It will be noticed that the only change in the re-enactment is that it includes also the apportionment of money for the upkeep and repair of bridges and roads, but it also excepts roads which are state highways and bridges and roads which are in a special road district. This re-enactment does not change the status of the opinion which you referred to in this request.

The law, in reference to the special road district, which is now Section 8527, R. S. Missouri 1939, was enacted in accordance with Section 22, Article X of the Constitution of Missouri. This section was passed upon in the case of State v. Pemiscot Land & Cooperage Co., 295 S. W. 78, par. 1, where the court said:

"In considering this constitutional question, we are not dealing with the power of the Legislature to regulate the disbursement of the funds for road purposes realized from the tax levy authorized by section 22 of article 10 of the state Constitution. The Legislature has dealt with that question in the Laws of Missouri 1917, pp. 457, 458. In section 37 of article

2 of said Laws it is provided 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, 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.

"We have held that the Legislature may direct the disbursement of these funds without contravening section 22 of article 10 of the state Constitution. State ex rel. v. Burton, 266 Mo. 711, 182 S. W. 746."

In the same paragraph it further said:

"It will be noted that this section of the Constitution, in plain and simple language, provides, in addition to taxes authorized to be levied for county purposes (under section 11 of article 10, Const.), the county courts may levy and collect, as state and county taxes are collected, a special tax of not more than 25 cents on each \$100 valuation, to be used for roads and bridges, but for no other purpose whatever; and the power thus conferred on the county courts is declared to be discretionary. This is an express grant of power to the county courts, and is a limitation of the power of the Legislature; a power granted to the county courts to levy and collect a special tax for road and bridge purposes. \* \* "

According to the above opinion the court, in passing upon the constitutionality of the legislative enactment, by

dictum, held that the legislature had the authority to regulate the disbursement of the funds for road purposes realized from the tax levy authorized by Section 22 of Article X of the State Constitution. The legislature of 1941, in setting out Class 3 at page 651, did not take advantage of this authority but excepted from the enactment the money used for the upkeep of bridges on state highways and for the upkeep of roads in special road districts. Therefore, it left the road money for budgeting purposes confined to the taxes realized under Section 8526, R. S. Missouri 1939, which was enacted by reason of Section 11, Article X of the Constitution of Missouri. Under this section the taxes realized applied to general road purposes only and not to special road districts. In the case of State v. Burton, 182 S. W. 746, 1. c. 748, the court, in holding that the legislature may control the disbursement of taxes realized under Section 8527, R. S. Missouri 1939, said:

"\* \* \* The legislative power to tax being inherent, the creation of agencies or instrumentalities for the levy, collection, and disbursement of such taxes follows as a necessary consequence, and hence the right of the Legislature to enact a law delegating in this case the disbursement of the taxes collected to a board of commissioners of a special road district is not an improper exercise of such power."

We also wish to call your attention to Section 12, Article X of the Constitution of Missouri, by reason of which section the legislature saw fit to enact Section 8702, R. S. Missouri 1939, which provides as follows:

"Such board may issue warrants on the treasurer of the board in payment of the expenses and obligations which the board are authorized to incur in behalf of such special road districts and such warrants may be issued in anticipation of the income and revenue provided for the year for which the debt or obligation for which the warrant is issued was incurred; but such districts or such board

on behalf thereof shall not become indebted in any manner or for any purpose to an amount exceeding in any one year the income and revenue provided for such year; Provided, however, that this shall not prevent the incurring of indebtedness under bond issue as is or may be provided by law."

The above section is not a part of the County Budget Act and is still in effect even as to money received by reason of the special road act as set out in Section 8527, R. S. Missouri 1939. This section prohibits the board of the special road district from incurring warrants in excess of the income and revenue provided for the year for which the date or obligation for which the warrant is issued was incurred.

Under both Sections 8526 and 8527, R. S. Missouri 1939, all portions of the tax which is 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. It was so held in the case of Hawkins v. Cox, 334 Mo. 640, 66 S. W. (2d) 539. In case of a special road district this money is not a part or subject to Class 3 of the County Budget Act as set out in the Laws of 1941, page 651. Under both Sections 8526 and 8527, R. S. Missouri 1939, the tax arising upon property not situated in any road district, special or otherwise, should be placed in the county road and bridge fund and would be subject to disbursement under Class 3 of the County Budget Act as amended in the Laws of Missouri, 1941, page 651.

#### CONCLUSION

In view of the above authorities it is the opinion of this department that the reenactment of Section 10911, Laws of Missouri, 1941, page 651, Class 3 does not prevent the protesting of warrants against the special road and bridge fund in a special road district providing it is not a violation of Section 8702, R. S. Missouri 1939.

It is further the opinion of this department that the reenactment of Section 10911, supra, only placed the road funds that are realized from Sections 8526 and 8527 of the

Hon. Conn Withers

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Revised Statutes of Missouri 1939, upon property not situated in any road district under the county budget law, Class 3, as amended by the Laws of Missouri 1941, page 651.

Respectfully submitted

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Assistant Attorney General

APPROVED:

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VANE C. THURLO  
(Acting) Attorney General

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