

COUNTY COURTS: Court may issue warrants on funds  
ROAD BOND TAX FUNDS: anticipated from taxes authorized by  
a bond issue; constitutionality of  
Section 13763; special road districts  
may not expend any of such funds; manner  
of determining the amount of anticipated  
revenue from such taxes.

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March 23, 1943  
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Mr. W. E. Thompson  
County Clerk  
Lewis County  
Monticello, Missouri



Dear Sir:

This is in reply to yours of recent date, wherein  
you submitted the following:

"As provided by section 13763 R. S. Mo.  
1939, the County Court of Lewis County  
called an election to be held on March  
10th, 1943. This order was made after  
the petition required had been filed,  
and the order called for a 10 cent levy  
on each \$100.00 valuation for a period  
of 10 years. The proposition carried by  
a vote of over two thirds majority of the  
qualified voters voting at said election.

"I would like for you to furnish me an  
opinion on the following questions:

"(1) Can the County Court issue warrants  
on this anticipated fund after it is spread  
of record at the May Term?

"(2) Do you consider this constitutional  
(taking for granted that all matters con-  
cerned with the election were in due form?

"(3) Would the Special Road Districts in  
the County receive any of the money derived  
from this levy?

"(4) Who would determine the amount of anti-  
cipated revenue to issue warrants against?

"(5) How would the amount of anticipated revenue be arrived at?"

Section 13763, to which you refer in your letter, provides in part as follows:

"The county court of any county in the state of Missouri, of its own motion may, and upon petition signed by not less than one hundred resident taxpayers of such county, filed and presented to such court, asking that a proposition be submitted to the qualified voters of the county to increase the rate of taxation within the limits prescribed by section 12 of article X of the Constitution of Missouri, for the erection of a court house or jail, or for the grading, construction, paving or maintaining of paved, graveled, macadamized or rock roads and necessary bridges and culverts therein, shall order that an election be held within forty-five days after making such order to determine whether or not the rate of taxation shall be increased. Said order shall specify the purpose for which the money to be derived from such increased rate of taxation shall be used and shall also specify the total or aggregate sum that in the judgment of the county court is necessary for such purpose and said order shall specify the rate per annum of such increase and the number of years it shall continue. \* \* \* \* \* If two-thirds of the qualified voters of the county voting at such election on such proposition shall vote in favor of said increased tax it shall be the duty of the county court to cause the same to be levied and assessed against all property in said county by law made subject to taxation for state and county purposes and cause the same to be collected at the same time and in the same manner that state and county taxes are collected, and said tax shall be kept as a special fund for the purpose or purposes

voted and shall be expended under the direction of the county court for the purpose for which it was voted and none other: Provided, that if the county court deems it advisable they may issue warrants against said tax in advance of its collection."

This is an enabling act to Section 12 of Article X of the Constitution of Missouri. The portions of which section that pertain to your question are as follows:

"No county, city, town, township, school district or other political corporation or subdivision of the State shall be allowed to become indebted in any manner or for any purpose to an amount exceeding in any year the income and revenue provided for such year, without the consent of two-thirds of the voters thereof voting on such proposition, at an election to be held for that purpose; nor in cases requiring such assent shall any indebtedness be allowed to be incurred to an amount including existing indebtedness, in the aggregate exceeding five per centum on the value of the taxable property therein, to be ascertained by the assessment next before the last assessment for State and county purposes, previous to the incurring of such indebtedness, except that cities having a population of seventy-five thousand inhabitants or more may, with the assent of two-thirds of the voters thereof voting on such proposition at an election to be held for that purpose, incur an indebtedness not exceeding ten per centum on the value of the taxable property therein, to be ascertained by the assessment next before the last assessment for State and county purposes previous to the incurring of such indebtedness; such proposition may be submitted at any election, general or special: Provided, that with such assent any county may be allowed to become indebted to a larger amount for the erection of court

house or jail, or for the grading, construction, paving, or maintaining of paved, graveled, macadamized or rock roads and necessary bridges and culverts therein; \* \* \* \* \*

(1)

On your first question, which is, can the county court issue warrants on this anticipated fund after it is spread of record at the May Term, we find no provision in the Constitution which would prohibit the General Assembly from granting such authority.

Section 1 of Article IV of the Constitution authorizes the Legislature to enact any legislation not contrary to the Constitution.

Searching through the statutes you will find where counties and cities, on a number of occasions, have been granted authority to issue warrants in anticipation of the current revenue. We particularly have in mind the Budget Act of 1933.

The last sentence in said Section 13763, R. S. Mo. 1939, reads as follows:

"\* \* \* Provided, that if the county court deems it advisable they may issue warrants against said tax in advance of its collection."

Therefore, in answer to your first question, it is the opinion of this department that the county court may issue warrants against this anticipated tax fund after it has been determined how much the tax will amount to.

(2)

On your second question, which is, do we consider this statute Constitutional, we start with the presumption that all statutes are Constitutional.

As stated above, Section 13763, is an enabling act to Section 12, Article X of the Constitution. We do not find any provision of the Constitution which would prohibit the General Assembly from enacting such legislation.

Therefore, in answer to your second question, we think this section is Constitutional.

(3)

On your third question, of whether or not Special Road Districts in the county would receive any of these tax funds, we find that said Section 13763 provides that the county courts shall expend this money.

Possibly the impression that the Special Road Districts may be entitled to demand and receive the portions of these taxes raised from properties in such districts is obtained from various statutes relating to Special Road Districts, which provide that such districts shall receive all road taxes raised on properties in their particular district.

From your request we cannot ascertain under what Article your districts are organized, but for the purpose of this point we refer you to Section 8691, R. S. Mo. 1939, which relates to eight-mile road districts and provides that taxes arising from and collected and paid on property lying and being within a special road district shall be apportioned and set aside to such special road district. Our courts, on a number of occasions have held that such road districts are entitled to have these taxes apportioned to them. State ex rel. Special Road District v. Barry, 302 Mo. 280; State ex rel. Special Road District v. Burton, 283 Mo. 44.

Comparing the provisions of said Section 13763 with those of Section 8691, it would seem that there is a conflict in these sections, in that said Section 13763 provides that the county court shall expend the tax money raised under authority of that section, while Section 8691 provides that all moneys raised on properties in a special road district shall be apportioned to that district.

The history of these acts is that Section 13763 was enacted in 1929 (Laws of Mo. 1929, page 416), while Section 8691 was enacted in 1913 (Laws of Mo. 1913, page 675).

Rules of construction which might be applicable here, are as follows:

59 Corpus Juris, 1051, Sec. 621, states the rule of construction of conflicting statutes, as follows:

"Statutes in pari materia, although in apparent conflict, should, so far as reasonably possible, be construed in harmony with each other, so as to give force and effect to each, as it will not be presumed that the legislature, in the enactment of a subsequent statute, intended to repeal an earlier one, unless it has done so in express terms; nor will it be presumed that the legislature intended to leave on the statute books two contradictory enactments. But if there is an unreconcilable conflict, the latest enactment will control, or will be regarded as an exception to, or qualification of, the prior statute."

State ex rel. Halsey v. Clayton, 226 Mo. 292, follows and applies this rule.

Also, the rule that two statutes relating to the same subject must be read together and the provisions of one having special application to a particular subject, will be deemed a qualification or "exception" to another statute general in its terms. This rule is applied in *Eagleton v. Murphy*, 156 S. W. (2d) 683.

These two statutes deal with the general subject matter of road taxes, but Section 13763 deals with road taxes raised under a bond issue by virtue of the provisions of that section, and we think it would be classed as a special statute and an exception to the other statutes relating to general road taxes. Under this rule of construction we think the courts would hold that this is a special statute and that the county court is the body which dispenses these taxes.

We are, therefore, of the opinion that Special Road Districts in the County would not be entitled to have any of these funds apportioned to them for expenditure on the roads in their districts, but that the County Court would expend this money.

(4) (5)

On the last two questions of who would determine the amount of anticipated revenue to issue the warrants against and how would the amount of anticipated revenue be arrived at, you will note that Section 12 of Article X of the Constitution prescribes that the value of the property which is to be taxed for the purpose of raising this revenue is "ascertained by the assessment next before the last assessment for state and county purposes." The courts have held that this means the assessment before the last completed assessment. State ex rel. v. Hackman, 294 Mo. 190..

Applying this rule, the last completed assessment was made in 1941 and the assessment next before that would be in 1940. So that would be the basis for the valuation to be used in fixing the rate for the tax for this year.

Under said Section 12, Article X, the rate of levy to raise the required tax is fixed by the County Court before, or at the time of incurring the indebtedness.

The basis for the rate having been made, and the rate having been fixed by the County Court, then, by multiplying the rate by the valuation as a base ascertained as aforesaid, the County Court is able to determine the amount of taxes which it may anticipate will be collected this year and it may issue warrants in anticipation thereof.

Therefore, answering your fourth and fifth questions, it is the opinion of this department that the County Court determines the amount of anticipated revenue to issue warrants against, and that such amount of anticipated revenue may be arrived at by multiplying the rate by the valuation as a base, which valuation is ascertained from the assessment next before the last assessment for state and county purposes.

Respectfully submitted,

APPROVED:

TYRE W. BURTON  
Assistant Attorney-General

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ROY MCKITTRICK  
Attorney-General

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