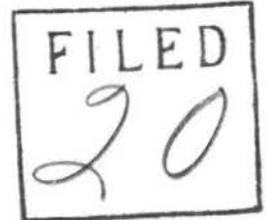


SPECIAL ROAD DISTRICTS: Current revenue may be applied only to current debts, and back and outstanding warrants may be paid only from surplus and delinquent taxes.

March 22, 1944



Honorable Lieu. Cunningham, Jr.
Prosecuting Attorney
Camden County
Camdenton, Missouri

Dear Sir:

We are in receipt of your letter of March 11, 1944, requesting an opinion from this department. Your letter reads as follows:

"Last Thursday the Camden County Court and the County Treasurer were in your office to discuss the above matter with you. I understand that you instructed them to have me request a written opinion upon the matter.

"In Camden County we have a 1¢ Common road tax collected over the entire County and a 25¢ Special Road and Bridge Tax collected over the entire County.

"Several years ago we had a County Court which overdrew the Special Road and Bridge fund to a considerable amount, at the present time there is around \$8,879.48 protested and outstanding Special Road and Bridge Warrants, dated from 1939 to 1941.

"The County Treasurer has at the present time a balance in the Special Road and Bridge fund of \$20,193.95.

"The County Court has for several years apportioned the Special Road and bridge fund among the Special Road Districts of the

County according to their respective assessed valuations, and now wishes to transfer said balance in said funds to the Special Road Districts, and pay the balance of said funds to the Common Road Districts to be used upon their roads, and leave approximately \$3,000.00 in said Special Road and Bridge Fund to apply to the back warrants. The Treasurer does not wish to do this until she is assured she is not responsible for the other back warrants, and wants your opinion as to whether the funds can be transferred to the Special Road Districts and the Common Road Districts before all of the old warrants are paid in full.

"The County Court wishes to know whether it has authority to allocate said Special Road and Bridge funds among the Special Road Districts and also the Common Road Districts according to their respective valuations. Of course the Common road tax is always so apportioned, however it is so small it does not help any appreciable amount.

"As it is time for the apportionments to be made the County Court is very anxious to have your opinion upon this matter at your earliest convenience, that they may take such steps as may be necessary in the matters."

The above request, in effect, states that the county court wishes to apportion approximately \$17,000 from the special road and bridge fund, among the various special road districts in Camden County, and leave a balance of approximately \$3,000 in said fund to apply on the payment of protested and outstanding special road and bridge warrants totaling nearly \$9,000. The request does not state the nature of the amount of money on hand now in this fund. In other words, it does not state whether this fund represents current revenue or whether it represents a balance or surplus left over from preceding years and not claimed by any

special road district. Investigation by this department reveals that under the audit of December 31, 1941, there was a balance in the sum of about \$1,500 left in this fund. It seems to us unlikely that over \$18,000 would be added to this figure between December 31, 1941, and January 1, 1944, as a surplus.

Since we are undecided whether this fund is wholly a surplus or wholly current revenue, or is composed of funds of each of those two classes, it will be necessary for us to consider both situations.

Under date of November 28, 1940, this department sent an opinion to you wherein it was stated that it is a well recognized principle of law, in so far as it relates to counties, that the revenue of a current year cannot be used to pay indebtedness of past years.

By Section 12, Article X, of the Constitution of Missouri, the credit system, as often referred to in relationship to counties, was abolished and counties were placed on a cash system, that is, current revenue must be applied to current expenses.

The case of State ex rel. v. Johnson, 162 Mo. 621, 1. c. 632, was quoted in that opinion, a portion of which we quote herewith:

"The preferred right of payment according to registration is not taken away further than the changed condition wrought by the Constitution requires, and when the Constitution is read into and with this section, it merely changes the order of payment so that the funds provided for each year's expenses is primarily the fund out of which warrants drawn for those expenses are to be paid according to their presentation and registration in that year, and when they are all paid and a surplus, as in this case, remains, then it is applicable to unpaid warrants of former years and section 6771, Revised Statutes 1899, provides the rule of priority just as it did before its modification by the Constitution

of 1875, and the surplus is not to be distributed pro rata."

Trask v. Livingston County, 210 Mo. 1. c. 597, 600, and State ex rel. Clark County v. Hackmann, 280 Mo. 1. c. 696, 697, were cited in this opinion as upholding the statement that current revenue can be used only to pay current indebtedness.

The case of Billings Special Road District v. Christian County, 5 S. W. (2d) 378, 1. c. 381, supports the statement, in the following quotation, that when timely application is made by a special road district for its portion of taxes collected under this section, the county court must transmit to the district its proper share:

"However, in State ex rel. v. Barry County, 302 Mo. 279, 258 S. W. 710, it was held that while section 10682 made no provision for distribution of the taxes collected thereunder, yet that, under the provisions of section 10818, applicable to special road districts, it is required that all taxes for road and bridge purposes collected by virtue of any existing law or any subsequent law thereafter enacted, upon property within a special road district, shall be set aside to the credit of such district, to be paid to the treasurer of such district, upon written application of the commissioners of such district. The county court is required, as such taxes are paid and collected, to apportion and set them aside to the credit of the district." (Emphasis ours.)

If the balance in the special road and bridge fund consists entirely of current revenue, and timely application is made by special road districts in the county, then the entire balance must be apportioned under the authority of Section 8527, R. S. Mo. 1939, which reads as follows:

"In addition to the levy authorized by the preceding section, the county courts of the counties of this state, other than those under township organization, in their discretion may levy and collect a special tax not exceeding twenty-five cents on each one hundred dollars valuation, to be used for road and bridge purposes, but for no other purposes whatever, and the same shall be known and designated as 'the special road and bridge fund' of the county: Provided, however, 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, or other 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: Provided further, that the part of said special road and bridge tax arising from and paid upon property not situated in any road district, special or otherwise, shall be placed to the credit of the 'county road and bridge fund' and be used in the construction and maintenance of roads, and may, in the discretion of the county court, be used in improving or repairing any street in any incorporated city or village in the county, if said street shall form a part of a continuous highway of said county leading through such city or village; but no part of said fund shall be used to pay the damages incident to, or costs of, establishing any road: Provided further, that no warrant shall be drawn in favor of any road overseer until an account for work done or materials furnished shall have been presented and audited by the county court."

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On the other hand, if all or a portion of the so-called "balance" in the special road and bridge fund consists of an actual surplus carried over from previous years, or delinquent taxes paid on previous years, then reference to the 1940 opinion rendered you will show that we advised that such funds could and should be used only for the payment of back warrants. To the extent that such funds represent a surplus, the county treasurer would not be authorized under Section 13833, R. S. Mo. 1939, in our opinion, to protest these warrants since actually there are funds in the account which legally should and must be used for the payment of these unpaid warrants. To the extent that the fund represents current revenue, the county treasurer is authorized to pay only current warrants.

The above and foregoing constitutes the opinion of this department.

Respectfully submitted

RALPH C. LASHLY
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General

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