

CONSTITUTION: Applicability of Art. X, Sec. 12, of the new Constitution of Missouri to counties under township organization.

March 14, 1945



Honorable Melvin E. Fish
Representative, Putnam County
Jefferson City, Missouri

Dear Sir:

Reference is made to your letter under date of March 14, 1945, requesting an official opinion of this office, and reading as follows:

"I request an official opinion of your office upon the application of Article X, Section 12, of the new Constitution with respect to Putnam County. For your information, Putnam County operates under township organization.

"For convenience, I am dividing this request into four parts:

"(1) What body levies the tax of 35¢ provided in the first sentence of said Section 12 in counties under township organization?

"(2) By whom, and in what area, are the funds arising under such levy expended?

"(3) By what body is the levy of 35¢ provided by the second sentence of said Section 12 levied?

"(4) By whom, and in what area, are the funds arising under such levy expended?"

As there has not as yet been a judicial construction of any part of the new Constitution, we are forced to construe its terms in accordance with general rules. In doing so, we have followed the numbering you have assigned to your respective questions.

(1) We believe that this question can be best answered by quoting from the sentence mentioned, omitting the portions thereof inapplicable to counties under township organization. The sentence then reads:

"In addition to the rates authorized in section 11 for county purposes, * * * the township board of directors in the counties under township organization, * * * may levy an additional tax, not exceeding thirty-five cents on each hundred dollars assessed valuation, all of such tax to be collected and turned in to the county treasury to be used for road and bridge purposes."

It thereupon becomes clear that the township board of directors is the proper body to levy the tax provided in this part of the section.

(2) We believe that your second question is answered by the proviso contained in Section 8821, R. S. Mo. 1939, reading as follows:

"Provided, 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 order of the township road and bridge fund and be used in construction and maintenance of roads * * *."

We are of the opinion that this proviso indicates an intention on the part of the Legislature that road and bridge funds arising from taxes levied on property located in the re-

spective townships outside the boundaries of special road districts shall be expended by the township board of directors of the various townships in the construction and maintenance of roads in such townships.

In this connection, your attention is directed to the provisions of Section 2 of the Schedule attached to the new Constitution, which, in our opinion, would have the effect of keeping the above proviso in force.

(3) We believe that this question is answered by a portion of the second sentence of Article X, Section 12, of the new Constitution, reading as follows:

" * * * it shall be the duty of the county court, * * * to make an additional levy of not to exceed thirty-five cents on the hundred dollars assessed valuation on all taxable real and tangible personal property within such district, to be collected in the same manner as state and county taxes, and placed to the credit of the road district authorizing such levy, such election to be called and held in the manner provided by law."

It is clear that the county court has the duty of making the levy after authorization by a majority vote of the persons affected.

(4) The plain provisions of the quoted portion of the second sentence found in Article X, Section 12, require that all moneys arising by virtue of the additional levy be placed to the credit of the district or districts authorizing such additional levy by a majority vote. We believe that such moneys, when collected, are to thereafter be expended by the proper administrative body having charge of all funds belonging to such district or districts. Such administrative body may be the board of commissioners of special road districts, or the township board of directors, as the case may be.

CONCLUSION

We, therefore, are of the opinion that the tax levy provided in the first sentence of Article X, Section 12, of the new Constitution of Missouri will be imposed by action of the township boards of directors in counties under township organization; that the funds arising by virtue of such levy will be expended by the township boards of directors for the construction and maintenance of roads located in their respective townships, except so much of such funds as are required by law to be turned over to boards of commissioners of special road districts located therein; that the additional levy provided in the second sentence of said Article X, Section 12, will be imposed by the county court after authorization by a majority vote of the persons living within the road district affected thereby; and that such funds arising by virtue of such additional levy will be expended for road and bridge purposes by the administrative body having charge of other funds of such district.

Respectfully submitted

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APPROVED:

J. E. TAYLOR
Attorney General

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