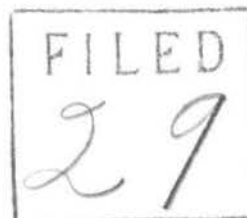


PRIVATE CAR TAX: RE: Officers authorized to supervise expenditure of funds allocated to counties having no township organization.

November 30, 1945



Honorable John H. Flanigan, Jr.
Assistant Prosecuting Attorney
Jasper County
Carthage, Missouri

Dear Sir:

This will acknowledge receipt of your letter of November 23, 1945, requesting an official opinion, which letter reads as follows:

"Jasper County has accumulated approximately \$3,500.00 in the fund created by the assessment of the tax contemplated by Article 15 of Chapter 74 R. S. A. Sections 11291 and 11292 contemplate that said fund should be expended for the building or repair of roads through the "Township Commissioners".

"Jasper County has no Township Commissioners and is not organized under township organization. It is my understanding that since 1935 the Jasper County Court, in conjunction with the County Surveyor, has supervised the construction and maintenance of county roads other than those under the supervision of special road districts.

"The court has asked me to request an opinion from you as to whether the court has the authority to disburse the funds above mentioned, and if so whether they are required to expend that portion of said funds in each township which said township would be entitled to under the provisions of Section 11291 above mentioned."

All counties have townships, they do not all have township organization, such is the case of Jasper County as shown in your request.

There are several well established rules of statutory construction, one is that statutes should receive a sensible construction such as will affect the Legislative intent, and if possible, so as to avoid an unjust or absurd conclusion. In the City of St. Louis vs. James Broaudis Coal Company, 137 S. W. (2d) 668, 1. c. 669(1), in approving the above rule of statutory construction the court said:

"(1) We are in full accord with appellant, that the primary rule of construction, whether of statutes or ordinances, is to ascertain and give effect to the lawmakers' intention, and that since such laws are presumably passed in the spirit of justice and for the welfare of the community, they should be interpreted, if possible, so as to further that purpose, and that frequently courts, to attain that end, look less to the letter or words of a statute or ordinance and more to the context, the subject-matter, the consequence and effect, and the reason and spirit of the law in endeavoring to arrive at the purpose of the lawgiver."

Another familiar rule of statutory construction is that the court in construing a statute will, if at all possible, construe same so as to give effect to the intent and purpose of the Legislature as expressed in said statute. In re: Costellos Estate, 92 S. W. (2d) 723, 1.c. 725, 338 Mo. 673, the court said:

* * * * *

"As the intention of the legislature, embodied in a statute is the law, the fundamental rule of construction, to which all other rules are subordinate, is that the court shall, by all aids available, ascertain and give effect, unless it is in conflict with constitutional provisions, or is inconsistent with the organic law of the state, to the intention or purpose of the legislature as expressed in the statute.' 59 C.J. p. 948."

Section 11290 R. S. Mo. 1939, provides that the State Auditor shall apportion to the respective counties and the City of St. Louis, the state's share of the private car tax and when this is done warrants shall be drawn upon the State Treasury in favor of the Treasurers of the various counties and the City of St. Louis, Section 11290, supra, reads as follows:

"On or before the first day of October of each year, the state auditor shall apportion to the counties and the City of St. Louis, on a basis of the number of school children in each, as shown by the last enumeration certified to the superintendent of public schools, on which the school moneys are apportioned and distributed, all of the state's portion of said money. When said apportionment has been made by the state auditor, he shall notify the county courts and the comptroller of the city of St. Louis of the amounts so apportioned, and upon requisition being made upon him, warrants therefor shall be drawn upon the state treasurer, in favor of the treasurers of the counties and the city of St. Louis. R. S. 1929, Sec. 10061."

Under Section 11291, R. S. Mo. 1939, the county courts of this state and the Comptroller of the City of St. Louis, after said private car tax is received by the treasurers of said counties and City of St. Louis, shall apportion said moneys among the various townships of their respective counties and wards of St. Louis. Section 11291, supra, reads as follows:

"When the money has been received by the treasurers of the counties and the city of St. Louis, it shall be the duty of the county courts of each county and the comptroller of the city of St. Louis to apportion said moneys among the townships of the counties and the wards of the city of St. Louis in the following manner: The said county courts and comptrollers of the city of St. Louis courts shall multiply the number of children on the last enumeration list of the school district in said townships and wards in the city of St. Louis by the ratio used by the state auditor in making the disbursements among the counties of the state and wards in St. Louis, and hold the amount due in each township and ward as a separate fund for the use of said township in the permanent construction of roads.. R. S. 1929, Sec. 10062."

Section 11292, R. S. Mo. 1939, specifically provides that said private car tax money shall be used exclusively for the construction and repair of gravel and macadamized public roads and streets and further specifies that it shall be used by the road commissioners of the various townships and the proper officers in the City of St. Louis, Missouri. Section 11292, supra, reads as follows:

"Said money shall be used exclusively by the road commissioners of the various townships and proper officers in the city of St. Louis for the construction or repair of gravel or macadamized public roads or streets, said work to be let by contract to the lowest and best bidder for so much per mile in the counties, and as seen by the proper officers of the city of St. Louis: Provided, that in counties where gravel or stone is not to be had, roads may be constructed with such other material as can be obtained for such purposes. R. S. 1929, Sec. 10063."

We are of the opinion that Section 11292, supra, clearly sets out the purpose for which said fund has been allocated, that it shall be used exclusively for the construction of roads and streets in the respective townships in each county and the City of St. Louis, Missouri. The only thing the Legislature, in passing the foregoing statutes, apparently overlooked was that all counties do not have township organization and consequently there are no road commissioners in said townships. In such case who should be authorized to use said money for the purpose for which it is allocated? We are of the further opinion that a reasonable construction to carry out the purposes of said provisions would be to allow such officers, who under the law have jurisdiction and authority to supervise and look after the construction and repair of the roads and streets in the respective townships of the county wherein no township organization is established, to carry out the purpose as evident in the foregoing statutes. It would be, in such case, either the county court, county highway engineer or road overseer. (See Article III and IX of Chapter 46, R. S. Mo. 1939.)

The Legislature is presumed to have knowledge of the laws of this state when enacting statutes. In *Graves v. Little Tarkio Drainage District No. 1*, 134 S. W. (2d) 70, 1.c. 81, the court said:

"(25) Since article 10, c. 64, R. S. 1929, was an amendment to the then drainage law we think the rule of construction announced in the case of *State ex rel. Dean v. Daues*, 321 Mo. 1126, 1152, 14 S. W.(2d)

990, 1002, applies: 'Moreover, in the construction of amendments to a statute, the legislative body, in enacting the amendment, will be presumed to have had in mind all existing, unamended and unchanged provisions and sections of the statute, and to have had in mind, also, the judicial construction given to such existing, unamended and unchanged provisions and sections of the statute by the highest court of the State. 25 R. C. L. 1067.'"

There is another rule of statutory construction that might be applicable in the instant case and that is to accomplish the purpose of a statute words may be read into said statute by the court in order to convey the full intention of the Legislature. In *State ex rel. vs. Moneyham*, 212 Mo. App. 573, 1.c. 580 and 581, the court said:

"If the intent of the Legislature is reasonably clear then all grammatical errors and errors in spelling and punctuation are disregarded or corrected. The meaning of words may be limited, restricted or expanded by construction of the courts when it becomes necessary in order to make the law harmonize with reason and properly express what was in fact intended by the lawmakers in enacting the law. (*St. Louis v. Christian Bros. College*, 257 Mo. 541, 552, 165 S. W. 1057; *Stack v. General Baking Co.*, 283 Mo. 296, 410-413, 223 S. W. 89.)

"To accomplish the same purpose words omitted may be read into the statute. (*Lewis' Sutherland Statutory Construction* (2 Ed.), sec. 382; *State ex rel. v. King*, 44 Mo. 283.)

"For the same reason a word, phrase or sentence may be read out of the statute. (*State ex rel. v. Sheehan*, 269 Mo. 421, 427, 190 S. W. 864.)"

It could easily be reasoned here that since, the Legislature is presumed to know the laws in the State of Missouri, it would have knowledge that all counties do not have township organization and, therefore, in enacting Section 11292, *supra*, it apparently intended that such officers, under the law as are authorized to

supervise, construct and repair roads in such counties not having township organization should be the proper authorities to supervise the expenditure of private car tax funds allocated to said counties. That the court in construing Section 11292, supra, in order to carry out the intent and purpose of the Legislature, could very well read into said statute after the word "St. Louis" in line 4 of said statute, the following words: "and counties not having township organization".

CONCLUSION

I It is, therefore, the opinion of this department that in view of the foregoing decisions and rules of statutory construction, it was the intention of the Legislature in enacting Sections 11290, 11291 and 11292, R. S. Mo. 1939, that in those counties not having township organization the officers that are usually authorized under the law to supervise the expenditure of moneys for the construction of roads and streets in their respective counties shall be the proper authorized officials to use and expend private car tax money allocated to their respective counties, and said funds should be used exclusively for construction and repair of gravel and macadamized public roads and streets in their respective counties. Furthermore, said funds allocated to the respective counties should be used in the various townships in said county in the same proportion as allocated by the State Auditor.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

W. O. JACKSON
(Acting) Attorney General

ARH:mw