

(Withdraws Opinion No. 67 to Wayne Norman, dated March 9, 1945)

SPECIAL ROAD DISTRICTS: Township boards are required to comply
TOWNSHIP BOARDS: with Sec. 8821, R. S. Mo. 1939, in
fixing maximum levy for road and bridge
tax for 1945.

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Smith
May 16, 1945



Honorable Wayne Norman
Prosecuting Attorney
Putnam County
Unionville, Missouri

Dear Sir:

Under date of March 9, 1945, this office rendered you
an opinion upon the following questions:

"What is the rate of tax that a board
of commissioners of a special road dis-
trict situate in a county under township
organization may levy for road purposes,
without calling a special election?"

"What is the rate of tax that a board of
commissioners of a special road district,
situate in a county under township organi-
zation may levy for road purposes with a
special election called by the county
court for the purpose of voting on a spe-
cial tax?"

Since that time, we have had occasion to write numerous
opinions upon questions as to what tax levies should be used
in the current year of 1945, copies of two of said opinions
being enclosed herewith. We have discovered that a part of
our opinion of March 9, 1945, above referred to, is erroneous,
and we are, therefore, withdrawing and cancelling said opin-
ion, and the following will be our opinion upon your questions.

Section 12 of Article X of the new Constitution reads
as follows:

"In addition to the rates authorized in section 11 for county purposes, the county court in the several counties not under township organization, the township board of directors in the counties under township organization, and the proper administrative body in counties adopting an alternative form of government, 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. In addition to the above levy for road and bridge purposes, it shall be the duty of the county court, when so authorized by a majority of the qualified electors of any road district, general or special, voting thereon at an election held for such purpose, 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.

"Nothing in this section shall prevent the refund of taxes collected hereunder to cities and towns for road and bridge purposes."

Under said Section 12, it will be seen that the township board of directors, in counties under township organization, is authorized to levy a tax up to thirty-five cents on each one hundred dollars valuation for road and bridge purposes. However, Section 8821, R. S. Mo. 1939, provides as follows:

"The township board of directors of any township may, annually, in their discretion, at the same time and in the same manner as taxes are now required by law to be levied for county purposes, levy an annual tax in

addition to those now authorized by law, in any amount not exceeding twenty-five cents on each one hundred dollars valuation on all property subject to taxation in such township, to be known as a special road and bridge fund: * * * "

It will be seen, therefore, that Section 8821, supra, is in conflict with the provisions of Section 12 of Article X of the new Constitution. In that situation, attention is directed to Section 2 of the Schedule to the new Constitution, which reads as follows:

"All laws in force at the time of the adoption of this Constitution and consistent therewith shall remain in full force and effect until amended or repealed by the general assembly. All laws inconsistent with this Constitution, unless sooner repealed or amended to conform with this Constitution, shall remain in full force and effect until July 1, 1946."

Under Section 2 of the Schedule, above quoted, Section 8821 of the Statutes will continue in force and effect until July 1, 1946, unless sooner amended or repealed. Therefore, the township board of directors can only levy a tax up to twenty-five cents for a special road and bridge fund, and this limitation applies to the tax levy for the year 1945.

Section 12, supra, of the new Constitution also provides that, in addition to the levy for road and bridge purposes mentioned in the first part of said section, the county court shall, when authorized by a majority of the qualified voters of a special road district voting on such proposition, make an additional levy of not to exceed thirty-five cents on the one hundred dollars valuation on all taxable property within such special road district. Said election is required to be called and held in the manner provided by law. The provision with respect to the additional tax is, therefore, dependent upon legislation to supplement it in order that it can be carried into effect. At the present time, no legislation has been passed providing the manner of calling and holding such

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an election. Consequently, there is no way by which said additional levy can now be made. If and when provision is made by the Legislature for calling and holding an election in special road districts for the purpose of voting upon such special levy, said additional levy can be made by the county court.

CONCLUSION

It is, therefore, the opinion of this office that the township board of directors in counties under township organization may levy for the year 1945, for a special road and bridge fund, a tax of not to exceed twenty-five cents on the one hundred dollars valuation, under the provisions of Section 8821, R. S. Mo. 1939, and that if and when legislation is passed authorizing the calling and holding of an election in special road districts to vote upon an additional levy, the county court of such county, when authorized by a majority of the qualified voters of a special road district, may make an additional levy of not to exceed thirty-five cents on the one hundred dollars valuation on all property within said special road district, which said tax shall be credited to the road district authorizing the levy.

Respectfully submitted,

HARRY H. KAY
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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