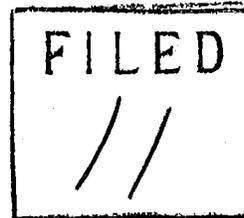


TAXATION:  
COUNTY COURTS:

*Roads:*

Section 13763, R. S. Mo. 1939 is a complete scheme providing for the levying and expenditures of funds for particular road purposes.



February 8, 1946

*9/20*

Mr. G. R. Breidenstein  
Prosecuting Attorney  
Kahoka, Missouri

Dear Sir:

This will acknowledge receipt of your letter of recent date requesting an official opinion of this department, which letter reads as follows:

"I would like to ask an opinion of your department.

"At the last general election this county voted to increase the tax levy by ten cents on the one hundred dollars valuation to raise money to construct and maintain all weather roads in the county, as authorized by Section 13763, R. S. Mo. 1939.

"In this county are several special road districts. Should that part of this tax which is collected on property in these road districts be turned over to these special road districts to be by them expended for the construction and maintenance of such all weather roads, or should this fund be administered by the county court."

Your question as to whether or not part of the tax which is collected on the property in special road districts should be turned over to these road districts and expended by them is answered in the same section which gives authority for the imposition of said tax.

Section 13763, R. S. Mo. 1939, in its pertinent part, reads as follows:

"\* \* \* 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. (R. S. 1929, Sec. 12104.)"

Our interpretation of the above quotation is that the County Court has complete control over the expenditure of the monies raised by any levy authorized under this section of the Missouri statutes. We believe the statute is sufficiently express and unambiguous, and contains its own direction for expending the funds raised under said Section.

We are aware that a conflict appears to arise between Section 13763, R. S. Mo. 1939, and other sections of the Missouri Statutes for the levy of road taxes and the distribution of the funds raised thereby. We have examined those statutes and find that the levies made thereunder are upon a different basis than the levy made under Section 13763, supra, or that they relate back to another statute that provides for the levy. For example, Section 8526, R. S. Mo. 1939, provides for the general levy of road taxes as follows:

"The county courts in the several counties of this state, having a population of less than two hundred and fifty thousand inhabitants, at the May term thereof in each year, shall levy upon all real and personal property made taxable by law a tax of not more than twenty cents on the one hundred dollars valuation as a road tax, which levy shall be collected and paid into the county treasury as other revenue, and shall be placed to the credit of the 'county road and bridge fund.'" R. S. 1929, Sec. 7890.

Sections 8527 and 8715, R. S. Mo. 1939, are in furtherance of the direction in Section 8526, R. S. Mo. 1939. However, Section 13763, R. S. Mo. 1939, is a special statute providing for the levy of taxes for a particular road fund, and contains within itself a complete scheme for the levying and expending of the funds raised thereunder. Where a statute is by nature a special statute and contains a complete scheme within itself, such statute will prevail over the general statutes relating to the same subject matter. The case of State v. Ross, 57 S. Ct. 60, 299 U. S. 72, held that special statutory provisions prevail over general ones which, in absence of special provisions, would control. The same principle was announced in State ex rel. McDowell v. Smith, 67 S. W. (2d) 50, 334 Mo. 653, the court holding where special and general statutes relate to the same subject matter, a special act will prevail as far as particular subject-matter comes within its provisions.

At l. c. 57, the court said:

" (10-12) 'It is the established rule of construction that the law does not favor repeal by implication but that where there are two or more provisions relating to the same subject matter they must, if possible, be construed so as to maintain the integrity of both. It is also a rule that where two statutes treat of the same subject matter, one being special and the other general, unless they are irreconcilably inconsistent, the latter, although later in date, will not be held to have repealed the former, but the special act will prevail in its application to the subject matter as far as coming within its particular provisions.' Lewis-Sutherland, Stat. Const. vol. 1 (2d Ed.) Section 274, pp. 537-539. See, also, State ex rel. Rutledge v. School Board, 131 Mo. 505, 516, 33 S. W. 3; Manker v. Paulhaber, 94 Mo. 430, 440, 6 S. W. 372." (underscoring ours.)

None of the other sections of the statutes that we have examined contain such a complete scheme or could stand alone in all aspects as does Section 13763, supra. For these reasons we do not believe the other sections of the statutes relating to the distribution of monies raised upon property in special road districts are applicable.

CONCLUSION

In our opinion funds raised under Section 13763, R. S. Mo. 1939, may be expended under direction of the county court for the purposes for which they were voted and none other, as provided by statute.

Respectfully submitted,

WILLIAM C. BLAIR  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General

WCB:mw;da