

ROADS AND BRIDGES: Tax provided for in Sec. 8527, Laws of 1945, page
TAXATION: 1478, is not a levy to be made by a township board,
TOWNSHIP ORGANIZA- and is not a levy in excess of the levy provided
TION: for in Sec. 8820, Laws of 1945, page 1497.

July 18, 1947

FILED

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Honorable R. E. Moulthrop
Prosecuting Attorney
Harrison County
Bethany, Missouri

Dear Sir:

This is in reply to your letter of recent date, requesting an official opinion of this department, and reading as follows:

"I respectfully submit the following questions upon which I desire an opinion from your office, the questions, being related, are set forth as follows:

"1. A construction of Section 8527 of the Revised Statutes of Missouri as enacted to be effective 1 July, 1946?

"2. Is Section 8527 applicable to a county of the third class having township organization such as Harrison County, Missouri?

"3. Is the tax provided by Section 8527 in excess of the levy provided for in Section 8820 of the Revised Statutes of Missouri also found in the Laws of 1945, this with relation to the limitations provided by Sections 11 and 12 of Article X of the Constitution of Missouri now in force?"

Section 8527, Laws of Missouri, 1945, page 1478, provides as follows:

"In addition to other levies authorized by law, the county court in counties not adopting an alternative form of government and the

proper administrative body in counties adopting an alternative form of government, in their discretion may levy an additional tax, not exceeding thirty-five cents on each one hundred dollars assessed valuation, all of such tax to be collected and turned into the county treasury, where it shall be known and designated as 'The Special Road and Bridge Fund' to be used for road and bridge purposes and for no other purpose whatever; 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 special road district shall be paid into the county treasury and four-fifths of such part or portion of said tax so arising from and collected and paid upon any property lying and being within any such special road district shall be placed to the credit of such special road district from which it arose and shall be paid out to such special road district upon warrants of the county court, in favor of the commissioners or treasurer 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 special road district and the one-fifth part retained in the county treasury 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."

Section 8820, Laws of Missouri, 1945, page 1497, provides as follows:

"In addition to other levies authorized by law, the township board of directors of any township in their discretion may levy an additional tax not exceeding thirty-five cents on each one hundred dollars assessed valuation in their township for road and bridge purposes. Such tax shall be levied by the township board, to be collected by the township collector and turned into the county treasury, where it shall be known and desig-

nated as a special road and bridge fund. The county court of any such county may in its discretion order the county treasurer to retain an amount not to exceed five cents on the one hundred dollars assessed valuation out of such special road and bridge fund and to transfer the same to the county special road and bridge fund; and all of said taxes over the amount so ordered to be retained by the county shall be paid to the treasurers of the respective townships from which it came as soon as practicable after receipt of such funds, and shall be designated as a special road and bridge fund of such township and used by said townships only for road and bridge purposes: Provided, that the amount retained, if any, by the county shall be uniform as to all such townships levying and paying such tax into the county treasury: Provided, further, that the proceeds of such fund may be used in the discretion of the township board of directors in the construction and maintenance of roads and in improving and repairing any street in any incorporated city, town or village in the township, if said street shall form a part of a continuous highway of the township running through said city, town or village."

Section 8820 has been amended by House Bill No. 42 of the 64th General Assembly, which bill will become effective ninety days after June 12, 1947, by adding the following provision:

" * * * except that amounts collected within the boundaries of road districts formed in accordance with the provisions of Article 18, Chapter 46, Revised Statutes of Missouri, 1939, shall be paid to the treasurers of such road districts; * * * "

Section 12 (a) of Article X of the Constitution of Missouri provides, in part, 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.

* * * "

From this constitutional provision it is clear that the designation of "township organization" as an alternative form of government in Section 13928, Laws of Missouri, 1945, page 1972, could not have the effect of providing that the alternative form of government legislated for in Section 8527, supra, refers to township counties, since both Sections 8527 and 8820 were enacted pursuant to the first clause of Section 12 (a) of Article X of the Constitution, above set out. The reference to alternative form of county government in Section 8527 refers to the form of county government in counties which are neither under township organization nor in which the governing body is the county court.

CONCLUSION

It is the opinion of this department that:

(1) Section 8527, Laws of Missouri, 1945, page 1478, does not authorize the township board of a county under township organization to levy a special road and bridge tax.

(2) Section 8820, Laws of Missouri, 1945, page 1497, is the only authorization for the tax levy of a maximum of thirty-five cents for road and bridge purposes to be levied by the township board, and the tax provided for in Section 8527 is not a tax in addition to that provided for in Section 8820.

Respectfully submitted,

C. B. BURNS, Jr.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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