

ROADS AND BRIDGES:  
SPECIAL ROAD DISTRICTS:  
TOWNSHIPS:

Levy of not to exceed 35¢ on proper in special road districts in counties under township organization is made by township board. Additional levy of not to exceed 35¢ may be voted by special road district. County court in counties under township organization may not assist in building and maintenance of bridges in special road district.

December 30, 1947



Honorable Theo. R. Schneider  
Prosecuting Attorney  
Bates County  
Butler, Missouri

Dear Sir:

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

"Bates County, Missouri, is a county organized under township organization and we have several special road districts organized and existing under Article 18, Chapter 46, Revised Statutes of Missouri, 1939.

"Section 8841 and 8842 pertaining to said special road districts was repealed by House Bill 799 as set forth in Laws of Missouri, 1945, page 1499, which left no provision for said special road districts to make a levy for maintenance of the roads and bridges within the district.

"Section 8820 pertaining to road districts other than special road districts in counties under township organization was repealed and re-enacted as set forth in Laws of Missouri, 1945, page 1497 and was further amended by House Bill 42 in 1947 by the addition of the following, 'Except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 8840 gives a special road district, '\* \* \*sole, exclusive and entire control and

jurisdiction over all public highways, bridges and culverts, within the district\* \* \*'.

"I would appreciate if you would give me your opinion on the following questions in view of the above changes:

"1. Does the township board set the levy for road and bridge tax including the land of a special road district lying in said township?

"2. While the special road district has exclusive control of the roads and bridges as above set forth can the county court assist in any manner in the building and maintenance of bridges within special road districts?"

Section 8820 of House Bill No. 42 of the 64th General Assembly provides that a levy of not to exceed thirty-five cents on the one hundred dollars assessed valuation may be levied by the township board of directors, and that the amounts collected within the boundaries of road districts formed in accordance with the provisions of Article 18 of Chapter 46, R. S. Mo. 1939, shall be paid to the treasurers of such road districts. From the provisions of this section, it is clear that this levy is set by the township board of directors, and applies to a special road district organized under Article 18 of Chapter 46, R. S. Mo. 1939, as well as to the part of the township not in a special road district.

The only other tax that may be received by a special road district is that authorized by Section 8529, Laws of Missouri, 1945, page 1480, which provides that an additional thirty-five cent tax may be levied on the property within a special road district when such special road district votes such a tax. The election for imposing such tax authorizes the imposition of the tax for one year.

In the case of Lancaster v. County of Atchison, 180 S. W. (2d) 706, the Supreme Court states the general rule with regard to the authority of the county court at l. c. 708:

"The county courts are not the general agents of the counties or of the state. Their powers are limited and defined by law. These statutes constitute their warrant of attorney. Whenever they step outside of and beyond this statutory authority their acts are void.\* \* \*"

We are unable to find any authority for the county court to expend money to aid the board of commissioners of a special road

district organized under the provisions of Article 18, Chapter 46, R. S. Mo. 1939.

Section 8825, R. S. Mo. 1939, is the authority for the county to build bridges in townships when such bridges cost more than one hundred dollars.

Section 8688, R. S. Mo. 1939, is the authority for the county court to aid a special road district formed under the provisions of Article 10, Chapter 46, R. S. Mo. 1939, in the construction, maintenance or repair of bridges in such special road district.

It is to be noted that Section 8682, R. S. Mo. 1939, provides that the board of commissioners in a special road district organized under the provisions of Article 10, Chapter 46, R. S. Mo. 1939, is given exclusive jurisdiction over "public highways" in its district, and authority for the county court to aid in constructing, maintaining or repairing bridges is found in Section 8688, R. S. Mo. 1939, while Section 8840, R. S. Mo. 1939, provides that the board in special road districts organized under the provisions of Article 18, Chapter 46, R. S. Mo. 1939, shall have exclusive jurisdiction over "public highways, bridges and culverts" in the special road district.

A well recognized rule of statutory construction is that the inclusion of one thing is the exclusion of another. Since the Legislature has provided only that aid may be given townships and special road districts organized under the provisions of Article 10, Chapter 46, it is our opinion that aid may not be given by the county to road districts organized under the provisions of Article 18, Chapter 46, R. S. Mo. 1939.

#### CONCLUSION

It is the opinion of this department that:

1. A special levy for road and bridge purposes of not to exceed thirty-five cents on the one hundred dollars assessed valuation is to be made by the township board of directors, and that such levy applies to special road districts organized under the provisions of Article 18, Chapter 46, R. S. Mo. 1939, as well as to that part of the township not in a special road district, and that an additional road and bridge tax of not to exceed thirty-five cents may be voted by the residents of the special road

Honorable Theo. R. Schneider

-4-

district under the provisions of Section 8529, Laws of Missouri, 1945, page 1480.

2. The county court has no authority to assist in any way in the building and maintaining of bridges within a special road district organized under the provisions of Article 18, Chapter 46, R. S. Mo. 1939.

Respectfully submitted,

C. B. BURNS, Jr.  
Assistant Attorney General

APPROVED:

---

J. E. TAYLOR  
Attorney General