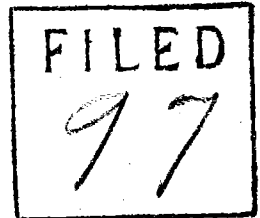


ROADS AND BRIDGES: Residents of municipality within the boundaries  
MUNICIPALITIES: of special road districts are not exempt from  
TAXATION: paying road taxes levied on property in such  
districts.

July 16, 1947



7-22  
Honorable Robert P. C. Wilson, III  
Prosecuting Attorney  
Platte County  
Platte City, Missouri

Dear Sir:

This is in reply to your letter of recent date wherein you request an opinion from this department on the question of whether or not persons residing within the corporate limits of towns and villages, which are located within a special road district, are exempt from paying the road and bridge taxes imposed on the property in the special road district.

From the letter which is attached to your request, and which letter was written by Mr. Stanley G. Patterson of the firm of Patterson, Chastain, Cowherd & Smith, it appears that the residents of a village which is located in a special road district are contending that they are exempted from the payment of the taxes imposed for road and bridge purposes in the special road district in which such village is located. This letter refers to Section 8682, R. S. Mo. 1939. On account of this reference, we will assume that the road district under consideration was created under the provisions of Article 10, Chapter 46, R. S. Mo. 1939.

Section 8673, R. S. Mo. 1939, which is the first section in the foregoing article, was repealed and reenacted, Laws of Missouri 1945, page 1494. This section reads as follows:

"Territory not exceeding eight miles square, wherein is located any city, town or village containing less than one hundred thousand inhabitants, may be organized as hereinafter set forth into a special road district; Provided, however, the provisions of this section shall not apply to counties under township organization or to class one counties."

Section 8691 of the same act, Laws of Missouri 1945, page 1495, provides as follows:

"In all counties in this state where a special road district, or districts, has or have been organized, or where a special road district, or districts, may be organized under this article, and where money shall be collected for road and bridge purposes under the provisions of Section 8527 upon property within such special road district, or districts, or where money shall be collected for pool or billiard table licenses upon any business within such special road district, or districts, the county court shall, as such taxes or licenses are paid and collected, apportion and set aside to the credit of such special road district, or districts, from which said taxes were collected, four-fifths of such part or portion of said road and bridge tax so arising from and collected and paid upon any property lying and being within any such special road district, or districts, and also one-half of the amount collected for pool and billiard table licenses so collected from such business carried on or conducted within the limits of such special road district; and the county court shall, upon application by said commissioners of such special road district, or districts, draw warrants upon the county treasurer, payable to the commissioners of such special road district, or districts, or the treasury thereof, for four-fifths of such part or portion of said road and bridge tax so collected upon property lying and being within such special road district, or districts, and also one-half of the amount collected for pool and billiard table licenses so collected from such business carried on or conducted within the limits of such special road district, or districts."

This section, it will be seen, makes provision for the division and distribution of the taxes collected for road and bridge purposes in such special road districts. It will be noted that this section refers to the taxes collected under Section 8527. The taxes collected under Section 8527

are authorized by House Committee Substitute for House Bill No. 784, Laws of Missouri 1945, page 1479. This section reads 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."

From a reading of these two sections of the statutes, it will be seen that the lawmakers have not exempted the property owners of towns and villages from the payment of the taxes for

the special road and bridge fund which are levied upon the property in the special road district. The provisions of these two sections would seem to be in conflict with the provisions of Section 7252, R. S. Mo. 1939, which reads as follows:

"All persons residing within the corporate limits of such towns shall be exempt from working on roads without the corporate limits of said towns, and from paying tax or fine relating to the same on property within such corporate limits."

This latter section seems to be authority for exempting the residents of a city or village which is situated in a special road district from paying road and bridge taxes on property within such city limits. However, from an examination of the history of said Section 7252, it will be found that this act was in the Laws of 1855, page 1526. At the time this act was in effect in 1855, Chapter 137, R. S. Mo. 1855, was also in effect. This chapter related to roads and bridges. Section 46, R. S. Mo. 1855, at page 1376, required able-bodied male inhabitants of a road district to work on county roads.

Section 47 of the same act imposed a \$2.00 poll tax on such persons and also a road tax of not more than 30 per cent of the state tax. Section 50 of said act authorized such male persons to work out a portion of their poll tax. The poll tax law was amended from time to time and reenacted in the statutes up until 1937, when it was repealed outright, Laws of Missouri 1937, page 440. The provisions of Section 47, supra, providing for the payment of not more than 30 per cent of the state tax for road purposes, has long since been repealed and revenue for road and bridge purposes in special road districts is raised under the provisions of Section 8527, supra. Therefore, since the act authorizing the imposition of the poll tax and the tax of not more than 30 per cent of the state tax has been repealed, then the provisions of Section 7252, supra, would be obsolete and of no force and effect. While this section has not been expressly repealed, we think this is a case in which a repeal of an earlier statute by a later statute by implication would be applicable. A rule of statutory construction which would be applicable here is stated by the Supreme Court in *State ex rel. Wells vs. Walker*, 34 S.W. (2d) 124, at l.c. 129:

"It was properly said in the Rutledge Case that repeals by implication are not favored; \* \* \* \* \* However, repeals by implication occur when there is a total repugnance between the later and the earlier statute. \* \* \* \* "

Applying that rule here, we think there is a total repugnance between the 1945 acts hereinbefore referred to and Section 7252, R. S. Mo. 1939, and that the provisions of said Section 7252, insofar as they are repugnant to the provisions of the 1945 acts are repealed by implication. That being the case, then all of the property owners in a special road district, whether they reside in a city or in a rural section, are subject to the taxes imposed for the special road and bridge fund in such district. It appears from said Section 8527 that the lawmakers have left it to the discretion of the county court as to how much of the one-fifth part of the special road and bridge fund taxes that it will use in improving or repairing the streets in any incorporated city or village in the county.

Section 8683, R. S. Mo. 1939, which relates to the expenditures of road funds by the board of commissioners, reads as follows:

"Said board shall have authority to expend not more than one-fourth of the revenue which may now or which may hereafter be paid into its treasury for the purpose of grading and repairing any roads or streets within the corporate limits of any city within said special road district in conformity with the established grade of said roads and streets in said cities and for the purpose of constructing and maintaining macadam, gravel, rock or paved roads or streets within the corporate limits of any city within the said special road district in conformity with the established grade of said roads and streets in said city: Provided, that no part of the revenue of any special road district in this state be expended outside of the county in which such special road district is situated."

This section and Section 8527, supra, support our conclusion that the lawmakers have intended that all of the property in a special road district be taxed for the special road and bridge fund tax. We make this statement because of the fact that the provisions of these two sections authorize expenditure of some of the tax money for the purpose of grading and repairing roads or streets within the corporate limits within any city in such special road district.

#### CONCLUSION

From the foregoing, it is the opinion of this department that the inhabitants of any town or village which is located within a special road district organized under Article 10, Chapter 46, R. S. Mo. 1939, are liable for the payment of the taxes levied for the special road and bridge fund in the district, and that it is discretionary with the board of commissioners of the special road district as to what portion of such taxes will be spent for grading and repairing the roads in such towns and villages, provided they expend not in excess of one-fourth of the road and bridge fund taxes for that purpose.

Respectfully submitted,

TYRE W. BURTON  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General

TWB:VLM