

COUNTY COURT:  
ROADS:

County Court in Douglas County, a county of the Fourth Class not authorized to pay to the City of Ava any part of the road tax collected within said city for maintaining roads leading into city.

September 15, 1950.



10-2-50

Hon. J. Bernie Lewis,  
Prosecuting Attorney  
Douglas County,  
Ava, Missouri.

Dear Sir:

This office is in receipt of your request for an opinion from this department on the following question:

"The County Court of this County has contracted with the City of Ava to turn to the city one-half of all road taxes collected from within the city for the purpose of the city's using such revenue to maintain roads leading into the city. I question the legality of the county court's power to turn such revenue over to the city, particularly inasmuch as Douglas County had adopted the county-wide road organization plan.

"I believe the issue might well be framed as follows, to-wit:

"In a county where all special and common road districts have emerged into a county wide road organization, does the county court have authority to pay a city one-half or any part of the road tax collected within said city for the purpose of maintaining roads leading immediately into said city?"

In your request for an opinion you indicate that the city of Ava is not located within a special road district and you do not indicate that the funds sought to be given to the city of Ava by the county court arise from a special benefit levy. The opinion will be prepared with these two facts in mind. We also take note of the fact that Douglas County is classified as a fourth class county.

It is the opinion of this office that no authority is conferred upon a county court of a fourth class county to pay to a city therein a part of the road tax collected within such city for the purpose of maintaining roads leading into the said city. This does not mean that the county court could not spend the road funds for the purpose of maintaining roads leading into such city but they could not give the money to the city to administer such expenditures.

Laws of Mo. 1945, p. 1478, Sec. 1 (R. S. Mo. A. Sec. 8527) 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." (Emphasis ours.)

Your attention is directed particularly to that part of the section quoted which is underscored. While it provides that the part of the special road and bridge tax arising from and paid upon property not situated in a special road district 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, there is no authorization for the county court to turn over such funds to a city for administration, use and expenditure.

We have carefully considered Article X, Section 12 of the Missouri Constitution which authorizes an additional tax for county Roads and Bridges in the following words:

Sec. 12(a):

"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."

Sec. 12(b):

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

While section 12b cited above might appear to authorize a refund of taxes collected as described in section 12a this section is not a self-enforcing provision of the constitution and the county court would have no power to make such a refund unless authorized by further act of the state legislature. An example of such authorization may be found in L. 1945, p. 1263, Sec. 1 (R. S. Mo. A. 8531 A.1):

"In Class 1 counties the special road and bridge tax authorized by Section 12, Article X, of the Constitution of Missouri and arising from and paid upon all property, including real estate lying and being wholly within the corporate limits of each incorporated City, Town and Village, and upon tangible personal property of the residents of each incorporated City, Town and Village, shall be paid into the County Treasury and 50 percentum of such tax so collected may be placed to the credit of the incorporated City, Town or Village in which it was collected, and that the same may be paid out to such incorporated City, Town or Village, by the unanimous action of the County Court when the verified claim is made. Such claim may be paid upon warrants of the County Court in favor of the Treasurer or other designated Officer of such incorporated City, Town or Village, to be used and applied exclusively in the improvement and repair of established public roads, streets, and bridges within the corporate limits of such incorporated City, Town or Village; and the county highway engineer shall keep a separate voucher account for each of such incorporated Cities, Towns, and Villages. If any money remains in the County Treasury for two years from the date it was paid into the Treasury without being paid out, or appropriated for current incomplete contracts, such money shall be transferred from the City, Town or Village road fund in the Special Road and Bridge Fund and such City, Town, or Village, shall lose the benefit thereof. The remaining sum of all such tax funds whether collected upon property within a special road district or within the limits of any incorporated City, Town or Village, shall be retained and used by the County Court in the improvement of roads and bridges. Provided that refunds authorized under the provisions of this act shall not be made to any City having a population of more than 350 thousand inhabitants."

You will note that this authorization to the county court to pay out of the county treasury to the incorporated city, town, or Village applies only to Class 1 counties. We find no such authorization for such expenditure has been made to a county court in a county of the Fourth class.

It is a well established principle of government that a county court has only such authority as is conferred upon it by the legislature and the constitution (46 C.J. Sec. 287), and we

find no such authorization to a county court in a fourth class county.

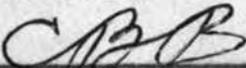
CONCLUSION.

It is the opinion of this office that the county court in Douglas County, a county of the fourth class, is not authorized to pay to the city of Ava any part of the road tax collected within said city for the purpose of maintaining roads leading immediately into or through said city.

Respectfully submitted,

JOHN E. MILLS  
Assistant Attorney-General

APPROVED:

  
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J. E. TAYLOR  
Attorney-General.

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