

ROADS AND BRIDGES:

COUNTY COURTS:

Revenue derived from special road tax levied under Sec. 8527, Laws 1945, p. 1478, and retained by county cannot be expended on city streets which form a part of a continuous county road if the city lies within an "eight mile" special road district organized under Art. 10, Chap. 46, R. S. 1939.

May 25, 1950.

Honorable Roy C. Miller,
Prosecuting Attorney
Webster County,
Marshfield, Missouri.



5/26/50

Dear Sir:

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

"This letter is to request from your office an opinion on the following set of facts. The last sentence of Mo. R.S.A. Sec. 8527, Laws 1945, p. 1478, Sec. 1 provides in general that the County Court may, in its discretion, spend road money on city streets where they form part of a continuous road. It provides specifically that the money may be spent 'in any incorporated city or village in the county'. Section 10910, Mo. R.S.A. provides specifically that money in Class 3 cannot be spent on any road in a Special Road District. My inquiry is whether there is a conflict between these two sections and specifically whether the County Court may, in its discretion, spend money out of Class 3 on the streets of an incorporated city which is located in a Special Road District organized under Article 10, Chapter 46, R. S. Mo. 1939 - provided, of course, that such street forms part of a continuous highway of said county. Webster County is a Class 4 County and does not have a Township organization."

The County Budget Law, referred to in your letter, was originally enacted in 1933; section 10911 thereof was amended in Laws 1941, p. 650, and as amended reads in part as follows:

"Class 3. The county court shall next set aside and apportion the amount required, if any, for the upkeep, repair or construction of bridges and roads on other than state highways (and not in any special road district). The funds set aside and apportioned in this class shall be made from the anticipated

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revenue to be derived from sections 8526 and 8527, R. S. Mo. 1939. This shall constitute the third obligation of the county." (Under-scoring ours.)

At the time this section was enacted and in 1941 when it was amended, Section 8526 provided the county court should levy a tax upon real and personal property "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.'" Section 8527 provided for an additional levy to be used for road and bridge purposes to be designated as the 'special road and bridge fund' and provided 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 road district shall be paid into the county treasury and placed to the credit of the special road district, or other road district from which it arose, and shall be paid out to the respective road district upon warrants of the county court, in favor of the commissioners, treasurer or overseer 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 road district, special or otherwise shall be placed to the credit of the 'county road and bridge fund' and be used in the construction and maintenance of roads, and 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 8526 was repealed (L. 1945, p. 1478) and never re-enacted; Section 8527 was repealed and reenacted to provide for four-fifths (rather than all) the tax collected and paid upon property lying within a special road district, should be placed to the credit of the special road district from which it arose and the one-fifth part retained in the county treasury.

From the foregoing sections it will be found that funds for road and bridge purposes to be placed in Class 3 of the County Budget Law were to be derived from revenue obtained under authority of sections 8526 and 8527, R. S. Mo. 1939. These were the taxes derived under levies designated as general road and bridge levies and special road and bridge levies. Said sections 8526 and 8527 were repealed by the 63rd General Assembly, (Laws 1945, p. 1478). Under Section 12 (a) of Article X of the Constitution of Missouri, 1945, provisions are made for raising of revenue for road and bridge purposes. The taxes derived under this authority are in lieu of the taxes authorized under Sections 8526 and 8527, R.S.Mo. 1939. Said Section 12 (a) provides in part as follows:

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"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 into the county treasury to be used for road and bridge purposes.* * *"

In order to supplement the foregoing constitutional provision, the 63rd General Assembly in Laws, 1945, p. 1478, enacted the following law as section 8527, which now 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."

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From a reading of this section, it is found that the moneys derived under this section are placed in the county treasury and designated as the special road and bridge fund. This is the fund which now goes into and makes up the revenue for Class 3 demands under the Budget Act. You will note that four-fifths of the revenue 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; that the one-fifth part remaining and the part of said special road and bridge tax arising from and paid upon property not situated in any special road district shall be retained in the county treasury to be expended from Class 3 of the County Budget Law. Since Class 3 of Section 10911, R. S. Mo. 1939, provides that funds in Class 3 of the county budget cannot be spent in any special road district, and since the special road and bridge fund of the county, arising under section 8527 is properly budgeted under Class 3 of the county budget, it appears that none of the money collected and retained by the county from the tax authorized by section 8527 can be spent in special road districts in the county.

Therefore, it is the opinion of this office that that part of the special road and bridge tax collected under the provisions of section 8527 (Laws, 1945), p. 1478), and retained by the county can be spent only in the road districts which are under the direct jurisdiction of the county court and cannot be spent in a special road district organized under Article 10, Chapter 46, R. S. Mo. 1939, nor upon the streets of an incorporated city therein.

Your attention is also directed to Article 10, Chapter 46, R. S. Mo. 1939, which provides the method by which 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 a special road district. As a part of that article Section 8691, Reenacted Laws, 1945, p. 1494, provides for the use of funds collected for road and bridge purposes under Section 8527 upon property within a special road district in the following words:

"In all counties in this state where the 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, appropriate 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

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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."

You will note that this section was enacted at the same session which enacted Section 8527 and does not provide for the expenditure of the one-fifth part retained by the county, nor for that part of the tax upon any property lying outside the special road district to be spent within the special road district.

This opinion is consistent with prior opinions rendered by this office relating to the same subject. For your convenience we are enclosing an opinion addressed to the Honorable Walter Whinrey, dated March 1, 1948, dealing with a problem similar to that submitted by you.

CONCLUSION.

It is the opinion of this Department that the part of the taxes collected from property lying within an "eight mile" special road district and retained by a county under the provisions of Section 8527 (Reenacted Laws 1945, p. 1478) cannot be expended by the county court on city streets which form a part of a continuous county road if the city lies within a special road district organized under Article 10, Chapter 46, R. S. Mo. 1939.

Respectfully submitted,

JOHN E. MILLS,
Assistant Attorney-General

APPROVED:



J. E. TAYLOR
Attorney-General

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