

SPECIAL ROAD DISTRICT:  
ROAD AND BRIDGE TAX:



A law which requires that a portion of the money produced by the levying of a tax under authority of the first sentence of Section 12(a) of Article X, of the Constitution of Missouri, 1945, be paid over in whole or in part to a special road district, in proportion to the amount of money produced by tax of the property within such special road district, is constitutional.

July 26, 1954

Honorable William M. Quinn  
Senator, 18th District  
Maywood, Missouri

Dear Sir:

Your recent request for an official opinion reads as follows:

"Art. X, Sec. 12, provides among other things that the county court may levy, or authorize, the collection of a tax not to exceed 35¢ on the \$100.00 assessed valuation for road and bridge purposes.

"Sometime ago the legislature passed a law requiring that a portion of this money produced by the levying of such tax for road and bridge purposes, be turned over, or paid, to special road districts in each county. What I would like to know, under the provisions of Art. X, Sec. 12, of the Constitution of Missouri 1945, is whether or not such a law is constitutional.

"It occurs to me that the purpose of the framers of the constitution was, that the money produced by the levy of the county court, authorized under the provisions of this section, was that it should be expended and controlled by the county court, and that any special road district is not entitled to any part of the same, and that any law passed for that purpose would be unconstitutional.

"I am herewith requesting an official opinion by your office regarding Art. X, Sec. 12, relating to this subject."

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Section 12(a) of Article X, of the Constitution of Missouri 1945, to which you refer, reads 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. 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."

From the above it is clear that under Section 12(a), of Article X, supra, two separate and distinct levies, neither of which may exceed 35¢ on the one hundred dollars assessed valuation, may be made. The first sentence in the above section authorizes the governing body of a county to make such a levy upon its own initiative, and in the exercise of its own discretion solely. The second sentence makes it the duty of the county court to make an additional levy of not more than 35¢ on the one hundred dollars assessed valuation in any general or special road district, when authorized to do so by a vote of a majority of the qualified electors in such road district voting in an election held for such purpose.

The law to which you refer, "a law requiring that a portion of this money produced by the levying of such tax for road and bridge purposes be turned over or paid to special road districts in each county," undoubtedly is Section 137.555 RSMo 1949, which reads as follows:

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"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."

This Section 137.555, supra, clearly is based upon the first sentence of Section 12(a), of Article X, of the Constitution of Missouri 1945, supra.

We now direct attention to Section 22, of Article X, of the 1875 Constitution of Missouri, which reads as follows:

"In addition to taxes authorized to be levied for county purposes under and by virtue of section 11, article 10 of the Constitution of this State, the county court in the several counties of this state not under township organization, and the township board of directors in the several counties under township organization, may, in their discretion, levy and collect, in the same

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manner as State and county taxes are collected, a special tax not exceeding twenty-five cents on each \$100 valuation, to be used for road and bridge purposes, but for no other purpose whatever; and the power hereby given said county courts and township boards is declared to be a discretionary power."

It will be noted that the above Section 22, of Article X, of the 1875 state Constitution of Missouri is almost identical with the first sentence of Section 12(a) of Article X, of the Constitution of Missouri 1945, supra. The main difference between the two sections is that the maximum amount of levy is increased from 25¢ under the old constitution to 35¢ under the new.

We now direct attention to Section 10482 RSMo 1909, as amended by L. Mo. 1913, Vol. 1, p. 669, which reads:

"Special road and bridge fund.-- In addition to the levy hereinbefore authorized to be made, the county courts of the several counties of this state, other than those under township organization, may, in their discretion, levy and collect, in the same manner as state and county taxes are collected, a special tax not exceeding twenty-five cents on each one hundred dollars valuation, to be used for road and bridge purposes, but for no other purpose whatever, and the same shall be known and designated as 'the special road and bridge fund' of the county: Provided, however, that in counties in this state in which a special road district exists, or shall exist, or where special road districts exist, or shall exist, as provided for by the laws of this state in article VI of chapter 102 of the Revised Statutes of Missouri, 1909, all that part or portion of said taxes herein mentioned and provided for which shall arise from and be collected and paid upon any property lying and being within such special road district, or districts, shall, by said county courts, be apportioned to such special road district, or districts, from which said tax was collected, and shall, when collected, upon written application by the commissioners of such special road district, or districts, be paid to said commissioners of such special road district, or districts, by said county courts, by warrants drawn upon the county treasurer, payable to said commissioners, or the treasurer of said special road district, or districts; and all said sums of money so apportioned to said special road district, or districts, and so paid over to the commissioners thereof, or the treasurer thereof, shall be used and

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expended by said special road district, or districts, by the commissioners thereof for road and bridge purposes, but for no other purpose whatever, and the county court shall apportion to all other road districts all taxes collected from property in such districts."

It will be noted that the above section is very similar to Section 137.555, supra. Section 10482, supra, relates only to counties not under township organization, as does Section 137.555, supra. It will be noted that both kinds of counties are embraced in above Section 22, of Article X, of the 1875 Constitution, and also Section 12(a), of Article X, of the Constitution of Missouri 1945.

It will be further noted that Section 10482, supra, provides that when a levy is made, as provided by that section, and as is provided by Section 137.555, supra, that all of the money raised from assessments made on property located in a special road district shall be returned to the district, whereas Section 137.555, supra, provides that four-fifths of such money shall be returned to the special road district.

We here direct attention to Section 137.585 RSMo 1949, which reads:

"1. 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 designated as a special road and bridge fund.

"2. 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

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by said townships only for road and bridge purposes, except that amounts collected within the boundaries of road districts formed in accordance with the provisions of chapter 233, RSMo 1949 shall be paid to the treasurers of such road districts; 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."

Let us now turn our attention to the 1916 case of State v. Burton, 266 Mo. 711. Here the County Court of Randolph County, acting under Section 10482, RSMo 1909, as amended by Laws of 1913, quoted above, made a levy of 25¢ on the one hundred dollars assessed valuation of all property in Randolph County for road and bridge purposes.

In the Moberly Special Road District, the sum thus collected amounted to \$9334.60. Subsequently, the Moberly Special Road District filed mandamus against the County Court of Randolph County to compel the county court to pay over to the Moberly Special Road District this entire sum of \$9334.60. In answer, the Supreme Court affirmed Section 10482 RSMo 1909, as amended by Laws of 1913, supra, as constitutional. The court arrived at the conclusion that the aforesaid section was constitutional. In so holding, the court in conclusion stated at l.c. 723:

"In view of all of the foregoing, we hold that the statutes in question do not, within the meaning of the Constitution, authorize the granting of public money to a corporation, nor do they interfere with the transaction of a county's business required to be exclusively performed by a county court, nor do they involve a going into debt by counties as prohibited by the Constitution or authorize the expenditure of public money for another purpose than that for which it was collected, nor conflict with either the letter or spirit or the intent and purpose of section 22 of article 10 of the Constitution of this State."

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Therefore, we find that in the above case the Missouri Supreme Court held that a law which required the county court to turn over to a special road district all of the money collected from that district, under a levy based upon Section 10482 RSMo 1909, as amended by the Laws of 1913, which section is substantially the same as our present Section 137.555, was constitutional.

In the 1923 case of Little Prairie Special Road District vs. Pemiscot County, 249 S.W., 599, and in the 1924 case of State v. Barry County, 258 S.W. 710, the Missouri Supreme Court, while not passing specifically upon the constitutionality of this law, assumed its constitutionality, in view of all which we believe it to be constitutional.

#### CONCLUSION

It is the opinion of this department that a law which requires that a portion of the money produced by the levying of a tax under authority of the first sentence of Section 12(a), of Article X, of the Constitution of Missouri 1945, be paid over to a special road district in proportion to the amount of money produced within such special road district, is constitutional.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Hugh P. Williamson.

Very truly yours,

JOHN M. DALTON  
Attorney General