

SPECIAL ROAD DISTRICTS:
ROADS AND BRIDGES:
TAXATION:
ASSESSMENTS:

(1) The special tax authorized by a vote of the residents of the LaMonte Special Road District on March 24, 1959, should not be levied by the county court. (2) The cash balance, remaining after the affairs of the LaMonte Special Road District have been wound up and all obligations have been discharged, shall be deposited as general revenue for class 3 funds.



September 1, 1959

Honorable Harold W. Barrick
Prosecuting Attorney
Pettis County
Sedalia, Missouri

Dear Mr. Barrick:

We have received your request for an opinion of this office, which request reads as follows:

"I herewith request an opinion from your office on the following situation:

"The LaMonte Special Road District was a town road district incorporated under Chapter 233, Sections 233.010 to 233.165, inclusive. Pursuant to statutory authority on March 24, 1959, a special election was held within said Road District for the purpose of voting a road tax of 35¢ in excess of the statutory authorization. By a vote of 20 to 3 against, said special tax was approved. This tax was to be applied and collected in 1959.

"Subsequently on June 23, 1959, pursuant to a petition duly filed and order of the County Court being duly made and notice duly posted, an election was held at which the question of dissolution of the Special Road District was presented to the voters. The proposition of dissolution of the district carried by a vote of 172 for dissolution to 51 against dissolution. The commissioners of the Road District then delivered all assets of the District including the cash on hand to the County Court of Pettis County. I would appreciate having your opinion upon the following questions:

Honorable Harold W. Barrick

"1. Is the money which was delivered to the County Court by the commissioners of the Special Road District to be entered as general revenue for Class 3 funds of Pettis County, or shall the funds be held separately for expenditure on roads within the boundaries of the Special Road District when in existence?

"2. If any of the funds turned to the County Court are to be held separately what percentage of the funds shall be so held in view of the fact that the statutory road tax is equal to the tax in excess voted for in 1958?

"3. Is the tax of 35¢ on the \$100 valuation voted at the special election of March 24, 1959 to be levied and collected in view of the subsequent dissolution of the Special Road District?

"4. If said special tax is to be levied and collected, what shall then be done with the money raised by said tax? Shall it be placed in Pettis County Class 3 general revenue or shall it be held separately for expenditure within the boundary of the Special Road District as it previously existed?

"I will appreciate hearing from you on this matter."

You advise that on March 24, 1959, LaMonte Special Road District voted the special tax authorized by Section 137.565, RSMo 1949, to be levied and collected in 1959. Subsequently, on June 23, 1959, an election was held to vote upon the proposition of dissolving the LaMonte Special Road District and the vote was in favor of dissolution. You further advised that LaMonte Special Road District was organized under Sections 233.010-233.165, RSMo 1949. In a telephone conversation subsequent to our receiving the request, you stated that immediately after the election the commissioners turned the books and all assets of the road district over to the county court.

We are enclosing herewith an opinion of this office dated May 25, 1954, to Honorable Charles E. Murrell, Jr., Prosecuting Attorney of Knox County, Missouri, wherein it was held that the last board of trustees of a special road district organized under Sections 233.010-233.165, supra, should proceed to wind up the

Honorable Harold W. Barrick

affairs of the district after a favorable vote to dissolve, and after all outstanding obligations are paid, they should turn over all property and machinery that had not been sold to the county court and pay into the county treasury any cash balance on hands.

It is to be noted that this opinion holds that if the district has voted the special tax authorized by Section 137.565, supra, for the year of dissolution, that the tax should be levied and collected. We would like to point out that this holding is based upon the proposition that the revenue derived from said tax will be required to take care of the outstanding obligations of the district, since there is no statute making the county liable for the obligations of a special road district that has voted to dissolve and permitting the expenditure of county road and bridge tax funds to discharge the obligations of such district. You have advised in the telephone conversation that the LaMonte Special Road District had enough cash on hands at the time of the vote to dissolve to discharge all outstanding obligations of the district and that none of the special tax previously authorized by a vote of the district will be needed in winding up the affairs of the district.

You inquire whether the special tax voted at the special election held on March 24, 1959, is to be levied and collected during the year of 1959 in view of the subsequent vote to dissolve LaMonte Special Road District.

Section 137.565, supra, provides that any general or special road district may vote an additional tax in excess of the statutory authorization, said tax not to exceed 35 cents per \$100 evaluation. Section 137.575, RSM 1949, provides as follows:

"If a majority of the qualified voters voting at such election shall have voted for such additional tax, it shall be the duty of the county court to make the levy for such district, which levy shall not exceed the amount named in the order calling such election. Such levy shall be in addition to other taxes which the county court is authorized to levy as provided by law. The tax so authorized by such district shall be collected in the same manner and at the same time as state and

Honorable Harold W. Barrick

county taxes are collected and placed to the credit of the road district authorizing such special levy, (R.S. 1939, §8531, A.L. 1945 p. 1478)." (Emphasis ours).

Section 137.575, set out directly hereinabove, requires the county court to levy the special tax when authorized by a vote of the voters in any road district. Therefore, if it were not for the subsequent vote to dissolve, the county court would have no alternative but to levy the special 35 cent tax as authorized by the voters in the LaMonte Special Road District. The question before us is whether the subsequent vote to dissolve has any effect on the duty of the county court to levy the special tax previously authorized by the voters of the district. We believe that it does.

A favorable vote on a proposition to impose an additional tax does not constitute a levy of the additional tax; it simply authorizes the taxing board, in this instance the county court, to levy the tax by an appropriate resolution or other formal action. 40 C.J.S. 359. See also *People ex rel. Ricker v. Chic. M. & St.P.Ry. Co.*, 142 NE 167.

Section 137.575, *supra*, provides that the special tax shall be collected in the same manner and at the same time as the state and county taxes are collected and placed to the credit of the road district authorizing such special levy.

In the instant situation the road district for whose benefit the tax would be levied and collected is no longer in existence, except for the fact that its affairs have not been completely wound up. Therefore, as the revenue from the special tax will not be needed to discharge existing obligations of the road district, if the county court levied the tax, the revenue derived therefrom could not be placed to the credit of the road district since it has been dissolved. As the district was solvent at the time the district voted to dissolve and as none of the revenue from the special taxes needed to discharge obligations from the district, it is our opinion that the special tax authorized by a vote of the district on March 24, 1959, should not be levied by the county court. It is our view that the vote to dissolve nullified all previous acts of the district contrary thereto, especially the authorization to levy the special tax.

You inquire whether money deposited with the county court by commissioners of a special road district that has voted to dissolve shall be entered as general revenue for class 3 funds

Honorable Harold W. Barrick

or shall the money be held separately and expended on roads within the boundaries of the dissolved district,

Section 233.160, RSMo 1949, provides for the manner in which special road districts organized under Sections 233.010-233.165, supra, may dissolve. Section 233.165, supra, provides for the levy of a tax to pay the bonded indebtedness of dissolved road district. Otherwise the statutes are completely silent as to the procedure to be followed upon a vote to dissolve a special road district organized under the above-cited sections and as to the disposition of the property and assets of such a district after all obligations have been discharged.

The legislature has provided the procedure to be followed upon dissolution of a special benefit assessment road district (Sections 233.290-233.315, RSMo 1949), but has not seen fit to enact similar legislation for a district such as here involved. Section 233.290, supra, provides that upon dissolution of such a benefit assessment district, the county court shall divide the land in the dissolved district into road districts under the provisions of Sections 231.010 to 231.030, 231.050 to 231.100, and 137.555 to 137.575, RSMo 1949. This section further provides that any money that may be on hand to the credit of such special benefit assessment road district after all liabilities have been taken care of shall be turned over to such new road districts in proportion to the number of acres allotted to each new district. However, the statutes relating to the type of road district involved herein are completely silent as to the disposition of the money and assets remaining after the affairs of the district have been wound up and it must be presumed that the legislature intended a different procedure in such districts than is provided for special benefit assessment districts.

Presumably, the money to be deposited to the county court by the commissioners of the LaMonte Special Road District has been derived from: (a) Proceeds from the sale of certain city and county licenses as provided by Sections 233.120 and 233.125, supra, (b) Special road and bridge taxes provided under Sections 137.555 and 137.575, supra. (c) Proceeds of road bonds issued under the authority of Section 233.450, RSMo 1949.

It is obvious that the intent of the statutes cited herein directly above, under which the funds of the LaMonte Special Road District have been derived, is that funds derived under said statutes should be used for the purposes for which they are collected.

Honorable Harold W. Barrick

Section 137.555, supra, provides that:

"* * *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; * * *"

Section 233.465, RSMo 1949, pertains to road bonds and reads as follows:

"The board of commissioners on behalf of the special road districts, and the county court on behalf of the townships, shall sell said bonds to the best advantage and the proceeds shall be paid over to the treasurer of the district or the county or township, as the case may be, and be by him disbursed, on the order of the board of commissioners or county court, in payment of the cost of holding said election and in paying the cost of constructing or improving roads in such districts or townships, including bridges and culverts."

Sections 137.575, 233.120 and 233.125, supra, under the authority of which some of the funds of the LaMonte Special Road District were derived, indicate that money raised pursuant to the provisions therein shall be used only for road and bridge purposes. Therefore, it is evident that, although there is no expressed statute directing that the cash balance of a dissolved special road district be entered as class 3 funds, the general intent of all the statutes relating to roads and bridges is that money raised for road and bridge purposes should be used for those purposes only.

It may be argued that as the 35 cents levy voted by the residents of the district for the year of 1958, and previous years thereto, under the provisions of Section 135.565, supra, was collected only from the residents of LaMonte Special Road District and should be held separate from the general class 3 funds for expenditure within the boundaries of the district as it existed prior to its dissolution. If this is true, then the amount to be held separate and apart from the general class

Honorable Harold W. Barrick

3 funds would have to be determined by the proportion that the income of the district derived from the special levy bears to the total revenue of the district.

While the foregoing argument may be logical, we can find no authorization in any statute for the county to create and maintain a separate fund within the class 3 fund for expenditure within the boundaries of dissolved special road districts organized under Sections 233.010-233.165, supra. Section 50.680, RSMo 1949, which classifies the proposed expenditures of a county, makes no provision for a special fund within the class 3 fund, and there is no provision whatsoever in the statutes relating to the dissolution of the special road districts that such funds be kept apart and separate and be expended within the boundaries of the dissolved district.

CONCLUSION

Therefore, it is the opinion of this office that:

(1) The special tax authorized by a vote of the voters of the LaMonte Special Road District on March 24, 1959, should not be levied by the county court.

(2) The cash balance, remaining after the affairs of the LaMonte Special Road District have been wound up and all obligations have been discharged, should be deposited in the class 3 fund and not maintained as a separate fund to be expended only on roads contained within the boundaries of the dissolved district.

The foregoing opinion, which I hereby approve, was prepared by Calvin K. Hamilton, one of my assistants.

Very truly yours,

John M. Dalton
Attorney General

CKH/mjd
Enclosure