

SPECIAL ROAD DISTRICTS: 1) Upon dissolution, a special road-district
ROAD DISTRICTS: formed under Sections 233.320 - 233.345, RSMo
ROADS AND BRIDGES: 1949 the territory contained therein becomes un-
TAXATION: organized territory; 2) Under the provisions of
ELECTIONS: Section 137.065, RSMo 1949, the county court on
COUNTY: its own motion may submit a proposition to increase the
tax rate and upon the filing of a petition containing
names of 10% or more of the qualified voters, they must submit the pro-
position; 3) The apportionment provisions of Section 137.070, RSMo
1949, are applicable only where the tax rate approved by the voters is
less than the combined rate for both county and township organizations.

October 8, 1959

Honorable William Y. Frick
Prosecuting Attorney
Putnam County
Unionville, Missouri



Dear Mr. Frick:

This is in response to your request for an opinion dated
July 23, 1959, which reads as follows:

"I have been requested by our County Court to
seek opinions from your office concerning
several matters now facing said Court.

"The first question involves the following
facts:

Many years ago, a special road district
known as Blackbird Special Road District
was legally formed out of a portion of
Lincoln Township. A proper petition to
dissolve said special road district was
filed with the County Clerk on March 17,
1959, and said district was ordered dis-
solved by said Court on June 1, 1959, and
a trustee appointed.

The County Court, on March 2, 1959, approved
the petition of Lincoln Township asking for
a special election to vote on a special road
and bridge levy for the years 1959-1960. The
election was held on March 31, 1959, and the
levy approved by the voters at such election.
Since the Blackbird Special Road District had
not, at the time of said election, been dis-
solved, the residents of said road district
did not vote in said election.

"The question for determination is whether the
Special Road and bridge levy can be applied to,

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and collected from the residents of, and property lying in the former Blackbird Special Road District.

"The Second Question for determination involves a construction of VAMS, Section 137.065 and Section 137.070.

1. Is the proper construction of paragraph Two of Section 137.065 that the County Court, may, in its discretion call and conduct a special election submitting a proposition to the voters for the increase of tax rates, and must call such election when petition therefore by not less than 10% of the qualified voters of said counties?

2. In counties under township organization, where an increase in taxes is approved by the voters as provided in Section 137.065, must such increase be apportioned between the townships and the County as provided in Section 137.070.

"If any additional information is necessary to clarify these requests, please advise me. If there are prior opinions of your office which bear upon any of these points with sufficient directness as to render a further opinion unnecessary, I would be most happy to receive the copies thereof."

You inquire as to whether the special thirty-five cent tax levy authorized by the voters of the Lincoln Township General Road District on March 31, 1959, may be levied against the property lying within boundaries of the dissolved Blackbird Special Road District.

In our telephone conversation of August 21, 1959, you advised that many years ago the Lincoln Township Board of Trustees formally declared that Lincoln Township would constitute a general road district. You further advised that some time thereafter Blackbird Special Road District was incorporated, the territory comprising Blackbird Special Road District being located in Lincoln Township. After Blackbird Special Road District was incorporated, the Township Board of Trustees did not take any action to re-define the boundaries of Lincoln Township General Road District to exclude that portion which was incorporated as Blackbird Special Road District. On June 1, 1959,

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the special road district was dissolved. The Township Board of Trustees has not taken any action to form the territory that comprised the dissolved district into a general road district or to make it a part of Lincoln Township General Road District.

The answer to your inquiry depends upon the status of the territory comprising the dissolved district after the dissolution. If the territory therein automatically became a part of Lincoln Township General Road District upon the dissolution of Blackbird Special Road District, then it would appear that the tax should be levied and collected even though the voters living within the dissolved district were not permitted to vote at the election. There is a long line of cases holding that the property lying within an area annexed to municipalities are subject to tax levies voted prior to the annexation to discharge bonded indebtedness and other municipal obligations. We believe that these cases would be applicable to the instant situation if the territory were annexed to the general road district upon dissolution. On the other hand, if the territory did not automatically become a part of Lincoln Township Road District and if the Township Board of Trustees has not taken any action with respect to making it a part of the general road district, then it would appear that the tax should not be levied and collected.

Sections 233.320 to 233.445, inclusive, RSMo 1949, govern the formation, operation and dissolution of special road districts in township organization counties. Sections 233.425 to 233.445, supra, provide for the dissolution of such districts. It is to be noted that there is nothing in these sections regarding the status of the territory following dissolution of the special road district.

We have been unable to locate any cases that have considered the status of the territory which comprised a dissolved special road district. However, we have found cases involving the dissolution of consolidated school districts. We believe the holding in these cases is applicable to the dissolution of special road districts.

It is generally held that, unless otherwise provided by statute, territory detached from one school district and added to another does not automatically return to, or again become part of, the former district on abolition of the latter. 78 C.J.S. 798.

In State ex inf. McGinnis Pros. Atty, ex rel. Kemble et al. v. Consolidated School District No. 3, Pike County et al. 209 S.W. 96, the trial court ordered a consolidated school district dissolved and further ordered that the several school districts out of whose territory said consolidated district was formed, be restored to all the

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rights they had prior to the establishment of the consolidated district. On page 98 of the opinion the Court stated as follows [1,2]:

"Plainly the judgment of the circuit court which sought to resuscitate the defunct school district was de hors the pleadings in this case and de hors the power of the court to render. Laws 1913, p. 723, §6; State ex inf. v. Smith, 271 Mo. loc. cit. 177, 196 S.W. 17. If the present consolidated school district was legally established (which is the basic allegation of relator's suit), then its dissolution, even if validly decreed, would not, per se, restore the corporate franchises of the previous school districts, nor restore its directors to their former offices and functions. Neither was it within the judicial power of the circuit court, after dissolving the consolidated district, to re-create and restore the former districts or their officers, even if such issue had been within the pleadings, for when the former districts ceased to exist as such, the terrain comprehended within them became a part of the new consolidated districts formed thereof, and upon a valid dissolution of the latter such terrain would become 'unorganized territory' (R.S. 1909, §10776), and could thereafter be organized into school districts only by the method prescribed in the statute and upon the votes of its inhabitants (R.S. 1909, §10836). It is clear, therefore, that so much of the judgment of the learned trial court as undertook to reincorporate the former school districts and refunction their officers was outside the issues on trial, as well as outside the pale of judicial authority. So much, therefore, of the decree in the present case as undertook to do this, was a simple nullity." (Emphasis added.)

See also Hydesburg Common School District of Ralls County, et al. v. Rensselaer Common School District of Ralls County, 218 S.W.2d 833, wherein the court stated that upon the dissolution of a consolidated district the territory which comprised the former consolidated district becomes unorganized territory.

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In view of the foregoing, we are of the opinion that the territory which comprised the dissolved special road district did not automatically become a part of the Lincoln Township General Road District at the time of dissolution. It became unorganized territory upon the dissolution and it remains as such until such time as the Township Board of Trustees forms it into a general road district or annexes it to the existing general road district. Since it is unorganized territory and not a part of Lincoln Township General Road District, the property therein is not subject to the special tax levy authorized by the voters of the general road district on March 31, 1959.

You inquire as to whether paragraph 2 of Section 136.065, RSMo 1949, means that the county court may, on its own motion, submit a proposition to the qualified voters of the county to increase the tax rate beyond the maximum specified in paragraph 1 of said section, but must submit such a proposition to the voters when a petition containing the signatures of at least ten per cent of the qualified voters of the county is filed with the county court requesting them to do so.

We are of the opinion that your interpretation of paragraph 2, Section 137.065, supra, is correct.

Paragraphs 2 and 3 of Section 137.065 reads as follows:

"2. County courts are hereby authorized to call and conduct a special election under the laws governing such election for the purpose of increasing maximum tax rates herein specified, or to submit a proposition for the increase of such rates at any regular election, and shall submit any such proposition at either a special or regular election when petitioned therefor by not less than ten per cent of the qualified voters of the county as determined by the total vote cast for governor in the last preceding general election for governor, and the proposition shall be as follows on the ballot: 'For a levy for county purposes of on the hundred dollars valuation' and 'Against a levy for county purposes of on the hundred dollars valuation.'

"3. Special elections called under the provisions of this section shall be limited

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to one election for each twelve month period."

From the language used in paragraph 2 of said section, it is quite obvious that the county court may on its own motion submit a proposition to increase the tax rate to the voters of the county, but in the absence of a petition containing the signatures of ten per cent or more of the qualified voters that they submit the proposition to a vote they are not required to do so. However, when a petition containing the signatures of ten per cent or more of the qualified voters is filed with the county court requesting them to submit such a proposition to the voters, then it is mandatory that they do so and they have no discretion in the matter.

It is to be noted that paragraph 3 of Section 137.065, supra, provides that only one special election to vote on a tax increase proposition may be called for each twelve-month period. Therefore, if the county court submits a proposition to increase the tax rate at a special election called for that purpose and such proposition is defeated, another special election may not be called for at least twelve months to vote upon such a proposition, even though a petition bearing the necessary number of signatures is filed with the court requesting such a submission to the voters.

You inquire whether in counties under township organization where an increase in the tax rate is approved by the voters as provided in Section 137.065, supra, must such increase be apportioned between the townships and the county as provided in Section 137.070, RSMo 1949.

Section 11(b), Article X, Constitution of Missouri, places certain limitations on local tax rates. That portion of Section 11(b) pertinent to the question herein reads as follows:

"Any tax imposed upon such property by municipalities, counties or school districts, for their respective purposes, shall not exceed the following annual rates:

* * * * *

"For counties -- thirty-five cents on the hundred

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dollars assessed valuation in counties having three hundred million dollars, or more, assessed valuation and fifty cents on the hundred dollars assessed valuation in all other counties;"

* * * * *

Section 11(c), Article X, Constitution of Missouri, permits the limitation set out in Section 11(b) to be increased by a favorable vote to do so. Section 11(c) reads as follows:

"In all municipalities, counties and school districts the rates of taxation as herein limited may be increased for their respective purposes for not to exceed four years, when the rate and purpose of the increase are submitted to a vote and two-thirds of the qualified electors voting thereon shall vote therefor; provided that the rates herein fixed, and the amounts by which they may be increased, may be further limited by law; and provided further, that any county or other political subdivision, when authorized by law and within the limits fixed by law, may levy a rate of taxation on all property subject to its taxing powers in excess of the rates herein limited, for library, hospital, public health, recreation grounds and museum purposes."

Section 137.065, supra, a portion of which is set out hereinabove, implements Section 11(b) and 11(c), Article X, Constitution of Missouri. Paragraph 1 of said section provides that the tax rate for county purposes in counties having an assessed valuation of less than \$300,000,000 shall not exceed fifty cents on the one hundred dollar valuation. Paragraph 2 authorizes the tax levy for county purposes to be increased above the limitation set out in paragraph 1 upon a favorable vote of the qualified voters of the county to do so. Section 137.070, RSMo 1949, recognizes that the taxes levied by the township board of trustees in township organization counties are to be considered as taxes for county purposes. It provides that the amount of revenue estimated by the county court for county purposes and the amount estimated by the township board for township purposes shall be added together to determine whether the tax rate exceeds the limitation imposed by Section 11(b), Article X, Constitution of Missouri.

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See also State ex rel. Conrad v. Piper, 214 Mo. 439, 114 S.W. 1, which holds that taxes levied by township boards are considered part of the taxes levied for county purposes.

There is no constitutional limitation on the tax rate that may be imposed by a township. The only constitutional limitation is that imposed by Section 11(b), Article X, Constitution of Missouri with respect to the tax rates for county purposes. However, there is a limitation of twenty cents per one hundred dollar assessed valuation imposed by Section 65.380, RSMo 1949, which reads as follows:

"The township board of directors shall, annually, not less than twenty nor more than sixty days prior to the first day of September, make out and file with the clerk of the county court of their county an estimate of the amount of money required to defray the expenses of said township during the next ensuing year. Said estimates shall be signed by the president and attested by the clerk of the board. The clerk of the county court shall cause the same to be placed on the tax books of said township; provided that the amount of such expenses shall not exceed in any one year twenty cents on the hundred dollars assessed valuation of the taxable property within said township."

Section 137.070, supra, reads as follows:

"In all counties in this state which have now or may hereafter adopt township organization, if the amount of revenue desired and estimated by the county court for county purposes and the amount desired and estimated by any township board for township purposes shall together exceed the rate per cent on the one hundred dollars valuation allowed by section 11 of article X of the Constitution of Missouri for county purposes, then it shall be the duty of the county court to apportion the tax for county purposes between the county organization and the township organization in the following manner, to wit: Eighty per cent of the taxes which may be legally levied for county purposes

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shall be apportioned to the county organization for county purposes, and twenty per cent of such taxes shall be apportioned to the township organization for the purposes provided by section 65.360, RSMo 1949 of the township organization law, as specified by the township board; but the combined rate for both the county and township organizations shall not exceed the maximum rate provided by the constitution. (11047, A. L. 1945 p. 1778)"

That portion of the above quoted section which provides for apportionment of the tax for county purposes between the county organization and the township organization is not applicable as long as the combined tax levy does not exceed fifty cents per one hundred dollar assessed valuation. For example, if the estimate of the township board of trustees requires a tax rate of twenty cents per one hundred dollars assessed valuation and the estimate of the county court requires a tax rate of thirty cents per one hundred dollar assessed valuation, then the combined tax rate does not exceed the constitutional limitation and there is no necessity to apportion the taxes. On the other hand, should the township estimate require a tax levy of twenty cents (the statutory maximum) and should the county estimate require a tax levy of forty cents, then the combined rate would be in excess of the constitutional maximum. In that event, as the combined rate cannot exceed the constitutional maximum of fifty cents, it would be necessary to apportion the taxes. The township organization would actually receive twenty per cent of the fifty cents or ten cents per one hundred dollar valuation.

A favorable vote to increase the tax rate under the provisions of Section 137.065, supra, actually raises the statutory and constitutional limit to the rate approved by the voters.

We assume that by the term "increase" you refer to the difference between the fifty cent maximum (in counties having an assessed valuation of less than \$300,000,000) and the rate approved by the voters. If this assumption is correct, then we are of the opinion that the "increase" does not enter into the problem of apportionment.

If the tax rate approved by the voters is equal to the combined total of the tax rate required by the township and county then the tax rate for county purposes would not exceed the constitutional maximum as authorized by the voters and there would be no necessity for apportionment. For example, if the tax rate required by the

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township estimate is twenty cents and the tax rate required by the county estimate is forty cents and the voters approve a tax rate of sixty cents, the tax rate for each organization would be that which was required by the estimates. In the foregoing example there is an "increase" but no apportionment is required.

On the other hand, if the tax rate approved by the voters exceeds fifty cents per one hundred dollars valuation but is not equal to the combined tax rate required by the township estimate and the county estimate, then the constitutional limit, as increased, would be exceeded and it would be necessary to apportion the taxes as provided in Section 137.070, supra. In the example used hereinabove, had the voters approved a fifty-five cent tax rate instead of a sixty cent rate, then it would be necessary to apportion the taxes even though there had been an "increase" of five cents. In this instance the fifty-five cent rate would be levied and then the taxes would be apportioned as provided in Section 137.070, supra.

CONCLUSION

Therefore, it is the opinion of this department that:

(1) The territory comprising the Blackbird Special Road District, upon the dissolution of said special road district, did not assume the same status it had before the incorporation of Blackbird Special Road District. Instead it became unorganized territory and, as such, the property located therein is not subject to the special tax levy authorized by the voters of the Lincoln Township General Road District.

(2) Paragraph 2 of Section 137.065, RSMo 1949, authorizes the county court, upon its own motion, to submit, at a special or regular election, a proposition to increase the tax rate. If a petition containing the signatures of at least ten per cent of the qualified voters of the county is filed with the county court that a proposition to increase the tax rate be submitted to a vote, then it is mandatory that they do so.

(3) If the tax rate approved by the voters under the provisions of Section 137.065, RSMo 1949, is equal to the combined rate for both the county and township organizations (based upon the estimate of the township board of trustees and the county court), then the apportionment provisions of Section 137.070, RSMo 1949, is not applicable. However, if the tax rate approved by the voters is less than the combined tax rate for both the county and township organization

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then the apportionment provision of Section 137.070, supra, would be applicable.

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

Very truly yours,

JOHN M. DALTON
Attorney General

CKH/mlw