

GENERAL ROAD DISTRICTS:
ROAD DISTRICTS:
COUNTY BUDGET LAW:
ROAD AND BRIDGE FUND:

All funds derived from both the first and second additional road levies in general road districts must be budgeted and may be spent only from class 3 of the budget in class 3 counties; the funds from the second additional road levy in several such general road districts may not be consolidated, but must be earmarked to the credit of each such district and may be expended only on roads or for the payment of protested warrants resulting from expenditure for roads within said district; county treasurer incurs no liability by paying or protesting warrants issued in accord with the budget estimate filed with him.

August 1, 1961



Honorable James E. Conway
Prosecuting Attorney
Cooper County
Boonville, Missouri

Dear Mr. Conway:

You have requested an opinion from this office on four questions which are based upon the following facts set forth in your letter:

"This County has a number of Special Road Districts which, for the purpose of this opinion, we may assume to be properly organized and existing. We also have a number of "General or Common" Road Districts, that is to say, areas outside the Special Road Districts.

"Our problem relates to the Common Road Districts. The area outside of Special Districts has been divided into Road Districts. (See 231.010). The County has assessed a 35¢ levy in each of these road districts and some of the districts have voted an additional 35¢ levy. (See Mo. Constitution, Article 10, Section 12B, 137.555 and 137.565).

"In dividing the tax revenue raised by the aforementioned levies, the County Court has treated the income from Special Road Districts and Common Road Districts in a similar manner, in regard to the budget. The County has allocated 20% of the first 35¢ of the revenue raised by both Common and Special Districts for class 3 of the budget. The remainder of the funds

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of the Common Districts have been held by the Treasurer to the account of the particular road district and spent on warrant of the County Court drawn against the fund of the particular common district. No budget was ever filed by the common districts and the warrants so drawn were not counted as coming from class 3 or any other budgeted figure.

"A number of our "Common or General" Road districts have assessed the additional 35¢ levies. (See 137.565)."

Your first question is stated as follows:

"1. Should the first 35¢ levy of the Common or General District all be budgeted and spent from class 3 of the budget?"

It is our opinion that all of the tax collected from said first thirty-five cent additional levy derived from property in common or general districts should be budgeted and spent from class three of the budget.

Section 137.555, RSMo 1959, which implements Article X, Section 12A of the Constitution, provides for the levy of an additional tax not exceeding thirty-five cents, all of which shall 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 only. Said section provides that such part of said tax which shall arise from and be collected and paid upon any property within any special road district shall be paid into the county treasury and four-fifths thereof shall be placed to the credit of such special road district and paid out to such special road district upon warrants of the county court in favor of the commissioner or treasurer of the district. Said section further provides that the part of special road and bridge tax arising 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 county street or 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.

We believe that the clear meaning of this statute is that the entire portion of the first additional levy which is received from property in the common or general road districts together with

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one-fifth of that portion of the levy received from property within special road districts must all be budgeted and spent from class three of the budget.

Section 50.680, RSMo 1959, applicable to your county (third class), provides with respect to class three of the budget that the county court shall set aside and apportion the amount required for roads and bridges on other than state highways and not in any special road district, and that the funds set aside and apportioned for said class shall be made from the anticipated revenue to be derived from the levies made under Section 137.555. There is no statutory authority whatsoever which justifies taking only 20 per cent of the revenue derived from property in the general districts for class three expenditures, nor is there any authority to expend the proceeds of said levy other than from class three of the budget. The very purpose of such classification is to first determine the amount of anticipated revenue applicable to such purposes and then provide for its expenditure.

Summarizing, we are of the opinion that all of such funds derived from the first additional levy received from property not in any special road district must be budgeted and may be spent only from class three of the budget.

Your second question is stated as follows:

"2. Should the second 35¢ assessed in some common or general districts all be budgeted and spent through class 3 of the budget without special accounts being kept as to the particular district? If this expenditure is not made through Class 3, how is it handled?"

The county budget law, above referred to, provides that the county court shall prepare the budget for the county. We find no provisions in the statutes for a budget to be prepared and filed by a general road district, nor would there be any procedure whereby such a budget could be so filed. As above stated, Section 50.680, RSMo 1959, provides with respect to class three of the budget that the funds set aside and apportioned in said class shall be made from anticipated revenue to be derived from the levies made under Section 137.555, RSMo. It is to be noted that Section 137.555 provides that "in addition to other levies authorized by law", the county court may levy an additional tax of thirty-five cents. The use of the word "levies" in the plural evidences the intent to include within class three revenue which is derived not merely from the first additional thirty-five cent tax but also from any other levy "authorized by law" referred to in Section 137.555. Hence we are of the opinion that the funds derived from the second thirty-five cents levy must necessarily

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be budgeted and spent only from class three of the budget.

Section 12A of Article X of the Constitution specifically provides that the second thirty-five cent levy which the voters of a general road district have authorized shall be "placed to the credit of the road district authorizing such levy." This necessarily means that the revenue derived from such second thirty-five cent levy must be earmarked and held to the credit of the particular general road district which authorized such levy and, as above stated, may be spent only on roads within such general road district.

Your third question is stated as follows:

"3. The County Treasurer has in his hands funds from a number of common districts; on his books these funds have been kept separate. May he properly consolidate the funds and treat them all as class 3 funds and pay protested class 3 warrants therefrom?"

In view of the foregoing, it is our opinion that the county treasurer may not consolidate the funds derived from the second additional thirty-five cent levy authorized by the voters in several general road districts. The constitutional provision above referred to expressly requires that such funds shall be placed to the credit of the road district authorizing such levy. In our opinion this would preclude consolidating the funds derived from taxpayers in one general road district with those derived from another. That is to say, even though all of such funds are class three funds they may be expended for class three purposes only on roads within the particular general district which authorized such second additional levy. It follows that such funds may not be expended for the purpose of paying protested class three warrants unless such warrants resulted from expenditures made for roads in the particular general road district which authorized the levy. Of course, the revenue derived from the first additional levy constitutes but one fund and may be expended without regard to the limitations applicable only to the second additional levy.

Your fourth question is stated as follows:

"4. The County Treasurer is of the opinion that he is liable if he allows the County Court to exceed his estimate of anticipated revenue in class 3. (\$30,000.00 in this case). The County Court has budgeted something in excess of \$50,000.00. Is the County Treasurer liable for allowing the County Court to exceed what he anticipates the

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budget to be or may the Court properly spend according to the budgeted figure, even if it is in excess of what the Treasurer believes the revenue will be?"

It is our opinion that there is no liability on the part of the treasurer for allowing the county court to exceed what such county treasurer anticipates will be the revenue applicable to class three of the budget. The county budget law grants no authority to the county treasurer to make any personal estimates. Section 50.700, RSMo 1959, provides that the county clerk shall make an estimate of the various sources of revenue and deduct ten per cent thereof for delinquent taxes to get the net amount estimated for the purposes of budget. It is provided that the county court must balance its estimated budget for the year for the first five classes (of which, of course, class three is one) on such net estimate. Section 50.710 provides that the court shall show the estimated expenditures for the year by the various classes. Section 50.740, RSMo 1959, provides that it is the first duty of the county court at its regular February term to go over the estimates and revise and amend the same so as to permit efficiency and economy. It is further provided that at such time the court may alter or change any estimate as public interest may require and to balance the budget, but shall have no power to reduce the amounts required to be set aside for classes one and three "below that provided for herein". Said section provides that the county clerk shall file a certified copy of the budget estimate with the county treasurer within five days after it has been approved by the court and provides that the county treasurer shall not pay or enter any protest on any warrant for the current year until such budget estimate shall have been so filed.

As will be noticed, the county treasurer has no duty to perform with respect to estimating the amount of anticipated revenue and there is no liability on his part by reason of paying or protesting any warrants issued in accord with said budget estimate.

CONCLUSION

It is the opinion of this office that in a county of the third class -

1. All of the funds derived from the first additional levy for road purposes which is received from property not in any special road district must be budgeted and may be spent only from class three of the budget.

2. The funds derived from the second additional levy must be budgeted and spent only from class three of the budget, but must be earmarked to the credit of the particular general road district which authorized the levy and may be expended only on roads within such district.

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3. The county treasurer may not consolidate funds derived from the second additional levy authorized by the respective voters in several general road districts and such funds may not be expended to pay protested class three warrants unless such warrants resulted from expenditures made for roads in the particular road district which authorized such levy.

4. The county treasurer has no duty to perform with respect to estimating the amount of anticipated revenue and there is no liability on his part by reason of paying or protesting any warrants issued in accord with the budget estimate filed with such county treasurer.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Joseph Nessenfeld.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

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