

BRIDGES: Tax monies raised under Section 137.555, RSMo
ROADS: 1959, can only be spent for use on county
ROAD DISTRICTS: roads and bridges, but may not be spent on
COUNTIES: bridges within a special road district. Expend-
TAXATION: iture of these funds is limited to those purposes
specified by statute.

OPINION NO. 36
No. 178 (1967)

January 18, 1968

Honorable Allen S. Parish
Prosecuting Attorney
Saline County Courthouse
Marshall, Missouri 65340



Dear Mr. Parish:

This opinion is written to consider four questions which you submitted as follows:

- "1. May the County Court spend any part of '137.555 funds' on county roads other than the kind described in Section 137.555?
- "2. May the County Court spend any part of the '137.555 funds' on special road district roads or return any part of the 1/5 part to the special road district?
- "3. What may the County Court do with that part of the '137.555 funds' which is not spent for any lawful purpose?
- "4. May the County Court spend any other tax money other than '137.555 funds' on county or special road district roads?"

The pertinent parts of Section 137.555, RSMo 1959, are set out hereafter for ease in understanding your problems.

"In addition to other levies authorized by law, the county court * * *, in their discretion may levy an additional tax, * * * 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

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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."

Monies that accrue to the county under the provisions of Article IV, Section 30(a), Missouri Constitution, as part of the County Aid Road Fund, are not considered to be within the ambit of your inquiry.

In considering your first question, it seems implicit in your request that the funds you refer to in your question are those funds only derived from taxes imposed under Section 137.555, RSMo 1959. Under this statute, those monies collected by such tax which are collected outside a special road district limits and the twenty percent retained by the county of those monies collected from taxes on property within a special road district are set aside for use by the county court on roads and bridges other than state highways. Under Section 50.550, RSMo Supp. 1965, these monies constitute and are budgeted by the county court for the Special Road and Bridge Fund "to be used for road and bridge purposes and for no other purpose whatever" as is specifically provided in these terms in Section 137.555, RSMo 1959.

We therefore conclude that the monies derived from any taxes imposed under authority of Section 137.555, supra, must be expended

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on county roads and bridges within the county or a city street where it constitutes a continuous part of a road network within the county (Opinion No. 253 of Attorney General, to Lauderdale, dated September 22, 1965) except bridges located in a Special Road District. This limitation will be more fully explained later in this opinion.

Your second question whether the county court may expend its Section 137.555 monies on roads in a special road district is answered in the affirmative, but to understand our reasoning, you need a knowledge of its legislative history which we will set out briefly in the following paragraphs.

It is appropriate at this time to point out that prior to the amendment of Section 50.680 and Section 50.710, the classification of class three county expenditures specifically excluded any expenditures "in any special road district." This office has so held in many opinions in the past (Opinion No. 96 of Attorney General, to Whinrey, dated March 1, 1948, and others).

However, the above referenced statutes, Sections 50.680 and 50.710, RSMo Supp. 1965, were later amended with the words "not in any special road district" deleted. In lieu thereof, two new subsections were enacted for class three expenditures which read as follows:

Section 50.680 - 3(a) -

"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. The funds set aside and apportioned in this class shall be made from the anticipated revenue to be derived from the levies made under section 137.555, RSMo. This shall constitute the third obligation of the county."

Section 50.710 - 3(a) -

"Repair, upkeep and construction of roads and bridges on other than state highways. List roads and bridges to be constructed."

Section 50.680 and 50.710, RSMo 1959, were repealed by Senate Bill No. 3, 73rd General Assembly, and the two new subsections were enacted (supra). Under this Bill, the former class three expenditures were divided into two types, Class 3(a) (which is involved here) and Class 3(b) (which deals with funds accruing under Article IV, Section 30(a), Missouri Constitution, known as

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The County Aid Road Fund). Essentially, the sum of the differences between the old section and the two new sections is the deletion of the words "(and not in any special road district)" so far as may be pertinent here. As we noted above, the phrase "(and not in any special road district)" prevented the county court from spending its money derived from Section 137.555 RSMo, on roads within a special road district.

Section 50.680 and Section 50.710, RSMo Supp. 1965, were later repealed in toto by Laws 1965, p. 155, H.B. No. 205 §1, effective January 1, 1967.

A new Section 50.540, RSMo Supp. 1965, became effective January 1, 1967. This, in turn, brought into operation (and now applicable to third and fourth class counties) Section 50.550, RSMo 1959. The latter statute (Section 50.550) provides, in pertinent parts, that:

"* * *The budget shall contain adequate provisions for the expenditures necessary . . . for the repair and upkeep of bridges other than on state highways and not in any special road district, * * *".

Sections 137.555, RSMo 1959 and 50.550, RSMo 1959, are in pari materia and are to be read and construed together with effect legislature (Mitchum v. Perry, 390 S.W.2d 600).

Considering Section 137.555, supra, and Section 50.550, supra, we conclude that the county court of your county may expend those sums of monies received under Section 137.555 for any county road (except on state highways) including roads in special road districts and city streets which form a part of the county network of roads and any county bridge not located in any special road district.

We note that Section 233.115, RSMo 1959 appears to contradict in part the provisions of Section 50.550, supra, in that Section 233.115 apparently (and when considered alone) authorizes "the county court of the county in which said special road district is located may in its discretion, out of the funds available to it * * *construct, maintain, or repair any bridge * * * or culvert" in "eight mile" road districts. Inasmuch as Section 50.500 (supra) specifically states tax monies accumulated and paid to a county may not now be expended on a bridge in a special road district, we conclude such funds are not available to a county court for these purposes.

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Your third question is answered by the statute itself wherein the expenditure of funds accumulated under Section 137.-155 are limited to spending them on roads and bridges as we have discussed in the paragraphs above. Any other use would be unlawful. The funds must be spent for a lawful purpose. Your third question is answered then by Section 137.555, supra, itself.

Your fourth question is not considered at this time since you do not indicate what tax monies were contemplated. Any opinion we would express would be conjecture. If you have a specific tax source that you have in mind and need to know about using all or part of the proceeds from that tax levy for road and bridge purposes, we request you then submit the specific facts.

CONCLUSION

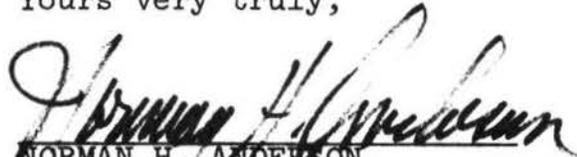
It is the opinion of this office that:

1. Tax monies collected by a third class county pursuant to Section 137.555, RSMo 1959 are budgeted by the county court for the Special Road and Bridge Fund to be used for county roads and bridges to include city streets where such city streets are a part of a continuous county road network but may not be used on bridges within a special road district.

2. Monies collected by the county pursuant to Section 137.555, RSMo 1959, may be expended only on county roads and bridges to include roads in special road districts and city streets where they are part of a continuous county road network but may not be expended on a bridge within a special road district or for any other purposes except those authorized by statute.

The foregoing opinion, which I hereby approve, was prepared by my assistant Richard C. Ashby.

Yours very truly,



NORMAN H. ANDERSON
Attorney General