

SOIL AND WATER COMMISSION:  
COUNTY COURTS:  
TAXATION:

When the governing body of a watershed subdistrict levies a tax pursuant to Sections 278.240 and 278.250, RSMo

Supp. 1967, and certifies the levy to the county court, the county court and appropriate county officials must levy and collect the tax.

OPINION NO. 332

June 8, 1970

Honorable Lee E. Norbury  
Executive Secretary  
Missouri State Soil and Water  
Districts Commission  
705 Hitt, University of Missouri  
Columbia, Missouri 65201



Dear Mr. Norbury:

This is in reply to your request for an official opinion of this office, which request reads as follows:

"Section 278.250 RSMo provides authority for Watershed Subdistricts to levy certain taxes.

"In 1969 the Pike Creek Watershed Subdistrict certified the organization tax (provided in paragraph 1) to the County Courts of Shannon and Carter Counties. Subsequently, these bodies refused to carry through the levy requested. Again in 1970 the procedure has been repeated and again these Courts refuse to comply.

"We would like an opinion as to the authority of the County Courts and other county officials in refusing to comply with the provisions of this statute."

Watershed subdistricts are authorized by Sections 278.160 through 278.300, RSMo, and are run by a governing body provided for by Section 278.240, RSMo Supp. 1967. One of the powers of the governing body is to levy an annual tax as follows:

"(4) To levy an annual tax and organization tax on the real property within the subdistrict subject to the limitations provided in section 278.250 for payment of the costs for carrying out any authorized purpose of such subdistrict;" Section 278.245, RSMo Supp. 1967.

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Section 278.250, RSMo Supp. 1967, reads in part as follows:

"1. In order to facilitate the preliminary work of the subdistrict the governing body of the subdistrict may levy an organization tax of not to exceed forty cents per one hundred dollars of assessed valuation of all real estate within the subdistrict, the proceeds of which may be used for organization and administration expenses of the subdistrict, the acquisition of real and personal property, including easements for rights-of-way, necessary to carry out the purposes of the subdistrict. This levy may be made one time only. The organization tax may be imposed as provided for in subsections 4 and 5.

\* \* \*

"4. The governing body shall make the necessary levy on the assessed valuation of all real estate within the boundaries of the subdistrict to raise the needed amounts, but in no event shall the levy exceed forty cents on each one hundred dollars of assessed valuation per annum and, on or before the first day of September of each year, shall certify the rate of levy to the county court of the county or counties within which the subdistrict is located with directions that at the time and in the same manner required by law for the levy of taxes for county purposes the county court shall levy a tax at the rate so fixed and determined upon the assessed valuation of all real estate within the subdistrict, in addition to such other taxes as are levied by the county court.

"5. The body having authority to levy taxes within the county shall levy the taxes provided in this law, and all officials charged with the duty of collecting taxes shall collect the taxes at the time and in the form and manner and with like interest and penalties as other taxes are collected; computation shall be made on the regular tax bills, and when collected shall pay the same to the subdistrict ordering its levy and collection or entitled to the same, and the payment of such collections shall be made monthly to the treasurer of the subdistrict. The proceeds shall be kept in a separate account by the treasurer of the subdistrict and identified by the official name of the subdistrict in which

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the levy was made. Expenditures from the fund shall be made on requisition of the chairman and secretary of the governing body of the subdistrict."

Thus, the statutes are clear and specifically authorize the governing body of a watershed subdistrict to levy a tax. When this levy is certified to the county court of the counties where the district is located it is the duty of the county court to levy the tax at the rate fixed and it is likewise the duty of the appropriate county officials to collect the taxes. These duties are not discretionary but are ministerial and the county officials must conform to the statute, subject to mandamus if they refuse. See State ex rel. State Tax Commission v. Briscoe, Mo.Banc, 451 S.W. 2d 1 (1970). In such case the Supreme Court of Missouri said, l.c.5, in reference to the case of State ex rel Thompson v. Bethards, 9 S.W.2d 603:

" \* \* \* The court held at 9 S.W.2d l.c.606, ' \* \* \* the clerk of the county court has a duty to perform the orders of the state board of equalization, direct and positive, and it may compel him to perform such orders if necessity requires.' Accord: First Trust Co. of St. Joseph v. Wells, 324 Mo.306, 23 S.W.2d 108; State ex rel Thompson v. Jones, banc, 328 Mo.267, 41 S.W.2d 393."

The court further said, l.c.5:

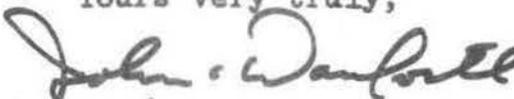
"The county clerk must perform the ministerial duties enjoined upon him by law and must extend and compute the taxes on the valuations set by the state tax commission. \* \* \*"

#### CONCLUSION

It is the opinion of this office that when the governing body of a watershed subdistrict levies a tax pursuant to Sections 278.240 and 278.250, RSMo Supp. 1967, and certifies the levy to the county court, the county court and appropriate county officials must levy and collect the tax.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Walter W. Nowotny, Jr.

Yours very truly,



JOHN C. DANFORTH  
Attorney General