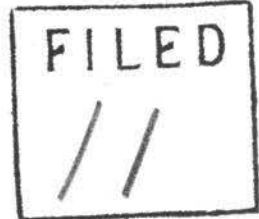


TOWNSHIP ORGANIZATION: Special Road Districts incorporated in counties under township organization are not entitled to any portion of the taxes arising from levies and charges.

June 11, 1945



Honorable R. Kip Briney
Prosecuting Attorney
Bloomfield, Missouri

Dear Sir:

Reference is made to your letter dated June 5, 1945, requesting an official opinion of this office, and reading as follows:

"Stoddard County is operating under what is commonly known as the Township Organization Law. One of the townships of Stoddard County is named Richland Township. Within Richland Township there was a short time ago organized a special road district called the 'Essex Special Road District.

"The Commissioners of the Essex Special Road District contend that the special road district is entitled to a part of what is commonly known as the 'Current Fund Revenue' of Richland Township. The part they contend they are entitled to is based upon the percentage of the assessed valuation of the special road district to the total assessed valuation of the township. This revenue is derived under Section 13981 R. S. Mo. 1939.

"My position is, and I have so advised the Commissioners, that they are entitled to no part of this so-called 'Current Fund', as a special road dis-

trict has no authority except that vested in the district by Statute, which is solely for road purposes, which the revenue derived under Section 13981 is for other purposes, and is levied and collected as a part of the fifty cent County Revenue Levy for general county revenue purposes by the County Court of Stoddard County.

"The question I desire you to answer is whether or not the Essex Special Road District is entitled to any part of the funds derived under and by virtue of Section 13981, which is the part of the general county revenue, set over to the township board by the County Court of Stoddard County."

We note from your letter of inquiry that the funds referred to therein are those arising under the provisions of Section 13981, R. S. Mo. 1939. Said section reads as follows:

"The moneys necessary to defray the township charges of each township shall be levied on the taxable property in such township, in the manner prescribed in the general revenue law for state and county purposes."

In accordance with your letter of inquiry and the statements contained therein as to the source of the funds, we are disregarding questions which might arise with respect to funds derived from the special road and bridge levies and this opinion will be directed only toward the disposition of the moneys collected to defray township charges.

The nature of such funds and the purposes for which they are raised are set out in the provisions of Section 13980, R. S. Mo. 1939, reading as follows:

"The following shall be deemed township charges: First, the compensation

of township officers for their services rendered in their respective townships; second, contingent expenses necessarily incurred for the use and benefit of the township; third, the moneys authorized to be raised by the township board of directors for any purpose, for the use of the township."

It has been definitely decided that township taxes imposed by virtue of the township organization law are taxes for "county purposes." The following language, appearing in State ex rel. v. Ry. Co., reported 123 Mo. 72, l. c. 76, so definitely declares:

"Under the township organization act the moneys necessary to defray the township charges of each township are required to be levied of the taxable property in such township in the manner prescribed in the general revenue law for state and county purposes (R. S. 1889, sec. 8478), and to this end the township board of directors is required to make out an account of the amount of money necessary to defray the expenses of the ensuing year, prior to the meeting of the county court at which the assessment for county purposes is to be made; said account signed by the president of the board and attested by the clerk is to be filed with the clerk of the county court on or before the first day of said court, who shall cause the same to be placed upon the tax books of said township, 'provided that said expenses shall not, together with the amount levied for road purposes and special bridge tax, exceed in any one year twenty cents on the one hundred dollars valuation.' Section 8482.

"Taxes to meet such charges are levied by the county court. Sections 7660 and 7731. The purposes for which they are raised and to which they must be applied

are township expenses, and for roads and bridges. The township expenses being compensation of township officials, and incidental expenses in discharging official functions which in counties not under township organization are discharged by the county officials, and all the charges are such as in counties under normal organization would come under the head of expenditures for county purposes. * * * * *

With this definition of the nature of such funds so declared by the Missouri Supreme Court it becomes pertinent to examine the statutes relating to the incorporation of such road districts in counties under township organization. This necessarily must be done to determine whether or not such special road districts are enjoined with the duty of making disbursements for which such funds might be required. The mode of creation of special road districts in counties under township organization is provided by Article 18, Chapter 46, R. S. Mo. 1939. Upon incorporation such special road district becomes, by the name mentioned in the order of incorporation, a political subdivision of the state for governmental purposes with all the powers mentioned in Article 18, Chapter 46, R. S. Mo. 1939, and such other purposes as may be conferred by law.

The duties of the commissioners of such special road district are set out and defined in a portion of Section 8840, R. S. Mo. 1939, from which we quote:

"* * * Said commissioners shall have sole, exclusive and entire control and jurisdiction over all public highways, bridges and culverts, within the district to construct, improve and repair such highways, bridges and culverts, and shall have all the power, rights and authority conferred by law upon road overseers, and shall at all times keep such roads, bridges and culverts in as good condition as the means at their command will permit, and for such purpose may employ hands and teams at such compensation as they shall agree upon; rent, lease or buy teams, imple-

ments, tools and machinery; all kinds of motor power, and all things needed to carry on such work: * * *"

From the above enumeration of the duties imposed upon the commissioners of such special road district, it is apparent that the Legislature conceived that such political subdivision confine itself to the supervision and maintenance of highways, bridges and culverts. Nothing appears in Article 18, Chapter 46, R. S. Mo. 1939, that in any way indicates that the commissioners of such special road districts will require any revenue for the discharge of general township expenses. All of the statutes relating to the raising of funds for the benefit of such special road districts indicate that the money derived therefrom is to be used solely and exclusively for road and bridge purposes.

We call your attention to Section 8841, R. S. Mo. 1939, as amended Laws of 1941, at page 528, wherein provision is made for the creation of funds for the use and benefit of the special road district. We think a portion of such section lends light upon the question you have asked in that it contains a specific directive as to the usage to be made of the funds of the special road district. We quote in part from said section:

"* * * All revenue so set aside and placed to the credit of any such incorporated district shall be used by the commissioners thereof for constructing, repairing and maintaining bridges and culverts within the district, and working, repairing, maintaining and dragging public roads within the district and paying legitimate administrative expenses of the district, and for such other purposes as may be authorized by law."

In addition to the funds provided in said Section 8841, statutory authority exists for the imposition of a special road and bridge tax for the benefit of such special road districts, which is also to be expended solely for road and bridge purposes. See Section 8821, R. S. Mo. 1939.

June 11, 1945

From the above and foregoing we have reached the conclusion that special road districts, incorporated in counties under township organization, do not have duties to discharge which will require them to assume the payment of any township charges. As bearing upon this matter we enclose herewith copies of two opinions previously rendered by this office; one to the Honorable Ray R. Fryer, Prosecuting Attorney, Clinton, Missouri, under date of March 5, 1945, and the other to the Honorable Theo. R. Schneider, Prosecuting Attorney, Butler, Missouri, under date of May 24, 1945. We believe that these opinions, or portions thereof at least, will be of assistance in answering the question you have proposed.

CONCLUSION

In the premises, we are of the opinion that a special road district incorporated in a county under township organization is not entitled to any portion of the township revenue fund arising under the provisions of Section 13981, R. S. Mo. 1939, for the reason that such fund is to be used solely and exclusively to defray township charges.

Respectfully submitted,

WILL F. BERRY, Jr.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

WFB:CP