

ROADS AND BRIDGES: 1941 revenue cannot be used to take care of 1940 outstanding warrants in the road and bridge and special road and bridge fund; special road districts are entitled to the funds of their districts upon timely application.

November 28, 1940 12/2



Mr. L. Cunningham, Jr.  
Prosecuting Attorney  
Camdenton, Missouri

Dear Mr. Cunningham:

This department is in receipt of your letter of November 18th, wherein you make the following inquiry: For convenience, we divide your question, the first question being as follows:

"The Treasurer and the County Clerk, as Budget Officer, have requested that I obtain your opinion upon the following matter.

The Common Road and Bridge Fund of Camden County, Missouri, is at the present time overdrawn approximately \$15,000.00. As I understand the law, the Common Road and Bridge Fund does not come under the budget hence the warrants drawn this year will have to be paid in order, out of next year's income.

The County Clerk has refused to sign any more warrants and the County Treasurer has refused to protest such warrants and they desire your opinion as to what their future official acts should be with reference to the warrants which the County Court or districts might desire to draw upon next year's income."

Most of the counties of the state place the funds derived from the Road and Bridge levies under Class 3 of the County Budget Act. However, we have heretofore ruled that the Road and Bridge Fund did not come within the terms of the Budget Act. It does appear that if the county has overdrawn the Road and Bridge Fund to the amount of \$15,000, that the County Treasurer is within his rights in refusing to protest further warrants. We think the fact that the Road and Bridge Fund is not considered when formulating the annual budget does not permit warrants to be drawn and paid out of next year's income. It is a well recognized principle of law, insofar as it relates to counties, that the revenue of a current year cannot be used to pay indebtedness of past years. By Section 12, Article X of the Constitution, the credit system as often referred to in relationship to counties was abolished and counties were placed on a cash system, that is, current revenue must be applied to current expenses. We refer you to the decision of State ex rel v. Johnson 162 Mo. 621, l.c. 631:

"This section then had been the law of this State for twenty years before the adoption of the Constitution of 1875. Prior to that, it was not necessary that a county warrant should be drawn upon a special fund or that it should come to the holder during the year in which the indebtedness was created. What, then, was the effect of the Constitution upon this section? As was ruled in Andrew County v. Schell, 135 Mo. 31, and State ex rel. v. Payne, 151 Mo. 670, that section was modified by the Constitution to the extent that thereafter the warrants drawn by the county court in any year to meet all the necessary and current expenses for that year must first be paid in full in the order of their registration, and if a surplus was left, then the section operated on

all other warrants just as it had previous to the adoption of the Constitution of 1875. In a word, that section, in so far only as it conflicted with the provisions of section 12 of article 10 of the Constitution, became inoperative by force of the Constitution as soon as it went into effect, because inconsistent therewith. But with this exception there is no such repugnancy as requires us to hold it was absolutely repealed, the rule of construction being that before it shall be construed as repealed by implication only, the two must be so repugnant that both can not stand, and, we think, with the modification we have mentioned, both can stand. Such has been the opinion of the Legislature, we think, from the fact that this section has been preserved through three revisions since the adoption of the Constitution. We conclude that this surplus, after the current expenses for the years 1895 and 1896 had all been paid, at once became subject to this general statute, section 3166, Revised Statutes 1889, which provides a just and equitable rule for the payment of the debts of the counties. The preferred right of payment according to registration is not taken away further than the changed condition wrought by the Constitution requires, and when the Constitution is read into and with this section, it merely changes the order of payment so that the funds provided for each year's expenses is primarily the fund out of which warrants drawn for those expenses are to be paid according to their presentation and registration in that year, and when they are all paid and a surplus, as in this case, remains, then it is applicable to unpaid warrants of former years and section 6771, Revised Statutes 1899, provides the rule of priority just as it did before its modification by the Constitution of 1875, and the surplus is not to be distributed pro rata."

Other decisions which apply this principle are *Trask vs. Livingston County* 210 Mo. l.c. 597, and *State ex rel Clark County vs. Hackmann* 280 Mo. l.c. 696.

We are of the opinion that only the surplus, if any, remaining after the current obligations are taken care of in the Road and Bridge Fund of next year can be used to pay the deficiency or outstanding warrants of this year. Of course, any funds received from delinquent taxes may be used also.

## II.

"The County Court also has the question of the distribution of the money among the various Special Districts which, according to the law as I understand it, is largely within the discretion of the court and they would appreciate your opinion as to whether the whole amount to be so distributed can be retained and applied to the payment of the outstanding warrants. Of course, the districts will cause trouble if the money is not distributed and the banks that hold the warrants are demanding that they be paid."

Special road districts are created by statute with their powers and duties well defined. They are entitled to their funds if timely application be made. In the decision of *State ex rel Special Road District vs. Barry County* 202 Mo. 279, the court holds to the effect that special road districts are entitled to receive all moneys collected as road taxes within the special road district. We quote, l.c. 290, 291:

"There was no further expression of the legislative mind with respect to these road-tax provisions until 1917. In that year the road law was recast in part.

Sections 10481 and 10482 as amended by the Act of 1913 were repealed and what are now Sections 10682 and 10683 covering the same subject-matter were enacted. Section 10594 was in no way referred to in the repealing act. It was therefore not expressly repealed, and there is no ground for holding that it was repealed by implication. As already stated it was carried into the present revision as Section 10818. The three sections (10682, 10683 and 10818) as they now stand do not indicate any change of the legislative purpose with respect to the distribution of road and bridge taxes collected upon property within special road districts. Section 10683 provides that all that part of the special road and bridge tax which shall be collected and paid upon property lying within any road district shall when paid into the county treasury be placed to the credit of the district from which it arose. Section 10682 which directs the levy of a road and bridge tax in connection with the general levy for county purposes makes no provision for its distribution. But Section 10818, voicing the legislative purpose with respect to special road districts, provides that all money collected 'as county taxes for road purposes, or for road and bridge purposes, by virtue of any . . . law,' upon property within a special road district, shall be set aside to the credit of such special road district. The conclusion that a special road district is entitled upon timely application therefor to receive all moneys collected as taxes for road and bridge purposes upon property within its boundaries is unavoidable."

Mr. L. Cunningham, Jr.

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CONCLUSION

We are of the opinion that if the road districts make timely application for the funds legally due their respective districts, that the same cannot be withheld by the county court, and the funds cannot be used and applied to the payment of outstanding warrants.

Respectfully submitted

OLLIVER W. NOLEN  
Assistant Attorney General

APPROVED:

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COVELL R. HEWITT  
(Acting) Attorney General

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