

ROADS AND BRIDGES: Township board not required to maintain streets
TOWNSHIPS: of incorporated town nor to pay part of road
taxes into town treasury.



July 9, 1953

Honorable J. S. Lincoln
Representative
Harrison County
Cainesville, Missouri

Dear Sir:

This will acknowledge receipt of your letter of June 4, 1953, in which you requested an opinion of this department. This opinion request, omitting caption and signature, is as follows:

"I am asked by the city council of our little town, population 618, to inquire as to the proper distribution of township taxes, collected in our township, as regards their application to the maintenance of streets within the corporate limits of the town. Our county has the township organization form of government.

"Up until six years ago all of the taxes collected within the corporate limits of the town were paid to the treasury of the town; now the township board take all the money and pay none of it into the town treasury, for the maintenance and upkeep of the streets, nor do they maintain the streets.

"Can the township board be forced to pay the taxes collected within the corporate limits of the town into the town treasury for the maintenance of the town streets and if not can the township board be forced to maintain the town streets, at least those known as through streets?

"I have been checking the statutes and have my opinion but will appreciate your opinion.

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"As I see it, a special road district might solve the problem.

"P.S. You understand, of course, in referring to township taxes, I refer to the .35 levy for maintainance of roads and bridges."

In your opinion request you do not definitely state whether your town is incorporated but you do refer to the "corporate limits" thereof. Therefore, for the purposes of this opinion, this department will assume that your town is incorporated.

The authority of your township to levy and collect a tax of 35 cents on the one hundred dollars assessed valuation for road and bridge purposes is conferred upon it by Section 137.585, RSMo 1949, which prescribes the following:

"1. In addition to other levies authorized by law, the township board of directors of any township in their discretion may levy an additional tax not exceeding thirty-five cents on each one hundred dollars assessed valuation in their township for road and bridge purposes. Such tax shall be levied by the township board, to be collected by the township collector and turned into the county treasury, where it shall be known and designated as a special road and bridge fund.

"2. The county court of any such county may in its discretion order the county treasurer to retain an amount not to exceed five cents on the one hundred dollars assessed valuation out of such special road and bridge fund and to transfer the same to the county special road and bridge fund; and all of said taxes over the amount so ordered to be retained by the county shall be paid to the treasurers of the respective townships from which it came as soon as practicable after receipt of such funds, and shall be designated as a special road and bridge fund of such township and used by said townships only for road and bridge purposes, except that amounts collected within the boundaries of road districts formed in accordance with the provisions of chapter 233, RSMo

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1949 shall be paid to the treasurers of such road districts; provided that the amount retained, if any, by the county shall be uniform as to all such townships levying and paying such tax into the county treasury; provided, further, that the proceeds of such fund may be used in the discretion of the township board of directors in the construction and maintenance of roads and in improving and repairing any street in any incorporated city, town or village in the township, if said street shall form a part of a continuous highway of the township running through said city, town or village."

In the event that your township board levies and collects this road tax, the moneys thus collected must be paid into the county treasury where it is known and designated as a special road and bridge fund. The county court may, in its discretion, order the county treasurer to retain an amount not to exceed five cents on the one hundred dollars assessed valuation out of such special fund and to transfer same to the county special road and bridge fund; the balance is to be paid to the township treasurers from whence the money came and shall be used by the townships only for road and bridge purposes. However, if there has been a special road district formed in a township, then the tax money collected within its boundaries shall be paid to the treasurer of the special road district.

The township board of directors may, in their discretion, use township road funds to improve and repair any street in an incorporated city located therein, if such street shall form a part of a continuous highway of the township running through said city. However, such city has no authority to force the township to return tax funds collected within said city's boundaries nor has it authority to force the township directors to maintain the city's streets.

With reference to your question regarding the special road district, we are enclosing an official opinion of this department, rendered under date of June 25, 1948 to Emmett L. Bartram, which answers your question.

CONCLUSION.

Therefore, it is the opinion of this department that the township board cannot be forced to pay the taxes collected

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within the corporate limits of Cainesville into the town treasury for the maintenance of the town streets nor can said township board be forced to maintain the town streets.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. John S. Phillips.

Very truly yours,

JOHN M. DALTON
Attorney General

JSP:sw