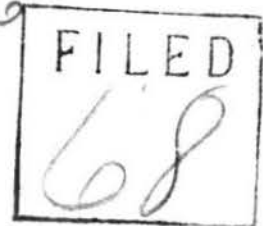


ROADS AND BRIDGES:
TAXATION:
SPECIAL ROAD DISTRICTS:
COUNTY COURTS:
COUNTY HIGHWAY COMMISSION:

TAXES LEVIED AND COLLECTED ON
PROPERTIES IN SPECIAL ROAD DISTRICTS,
FOR THE ROAD AND BRIDGE FUND SHALL
BE TURNED OVER TO SUCH SPECIAL ROAD
DISTRICT AND COUNTY COURT MAY USE
SUCH TAXES THAT IT RECEIVES ON ACCOUNT
OF THE ROAD AND BRIDGE
FUND TAX FOR IMPROVEMENT
OF ROADS OF THE COUNTY
HIGHWAY SYSTEM.

January 5, 1938

Honorable Edwin C. Orr,
Prosecuting Attorney,
Boone County,
Columbia, Missouri.



Dear Sir:

This office acknowledges receipt of your request for an official opinion on the question of whether or not by the provisions of Section 7867 R.S. Mo. 1929, all of the taxes levied and collected for the road and bridge fund of the county by authority of Section 7890, R.S. Mo. 1929, stands appropriated to the use of the County Court where levied, to be used at the discretion of such Court for the construction and maintenance of roads and bridges located within the confines of the County Highway System as well as all other roads in the county.

Your inquiry particularly refers to such portion of the 'Road and Bridge Fund' that are levied and collected upon properties located in Special Road Districts. By virtue of the provisions of Sections 8042, 7890 and 7891 R.S. Mo. 1929, and by the rulings of the Courts on the question, these taxes have gone to the Special Road Districts in the County in which the properties were located.

The Courts in a long line of decisions have construed the provisions of Sections 7890, 7891 and 8042 R.S. Mo. 1929, so that the Special Road Districts would get all of the taxes which are levied and collected for the 'Road and Bridge Fund', by virtue of the provisions of said Sections 7890 and 7891, upon the properties in such districts. The last time the question was before the appellate court was in 1933, in the case of Hawkins v. Cox, 66 S.W. (2d) 539; 334 Mo. 640, and in this case the Court followed the foregoing rule as to where these taxes should go.

If by the provisions of Section 7867, R.S. Mo. 1929, the Legislature intended to include the taxes collected by the provisions of Section 7890, which had theretofore gone to the Special Road Districts containing the properties upon which such taxes were levied and collected, then it will be necessary for said Section 7867 to receive such a construction that it

would repeal by implication those provisions of Sections 7890, 7891 and 8024 which have heretofore given these taxes to the Special Road Districts which contained the properties upon which they were levied.

In construing these statutes, they should be considered together, because they deal with the same subject matter.

Section 7867 R.S. Mo. 1929, is as follows:

"All taxes derived from the levy authorized by Section 7890 R.S. Mo. 1929, are hereby appropriated to the use of the county court in each county where levied, to be used at the discretion of the said court for the construction and maintenance of roads and bridges located within the confines of the county highway system herein provided for, as well as all other roads and bridges in such county."

Section 7890 R.S. Mo. 1929, is as follows:

"The county courts in the several counties of the State having a population of less than two hundred and fifty thousand inhabitants, at the May term thereof in each year, shall levy upon all real and personal property made taxable by law a tax of not more than twenty cents on the one hundred dollars valuation as a road tax, which levy shall be collected and paid into the county treasury as other revenue, and shall be placed to the credit of the "county road and bridge fund".

Section 7891 R.S. Mo. 1929, is as follows:

"In addition the levy authorized by the preceding section, the county courts of the counties of this state, other than those under township organization in their discretion may levy and collect a special tax not to exceed twenty-five cents on each one hundred dollars valuation, to be used for road and bridge purposes, but for no other purpose whatever, and the same shall be known and designated as 'the special

road and bridge fund' of the county: Provided, however, that all that part of portion of said tax which shall arise from and be collected and paid upon any property lying and being within any road district shall be paid into the county treasury and placed to the credit of the special road district, or other road district, from which it arose, and shall be paid out to the respective road districts upon warrants of the county court, in favor of the commissioners, treasurer or overseer 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 road district, special or otherwise, shall be placed to the credit of the 'county road and bridge fund' and be used in the construction and maintenance of roads, and 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; but no part of said fund shall be used to pay the damages incident to, or costs of, establishing any road: Provided further, that no warrant shall be drawn in favor of any road overseer until an account for work done or materials furnished shall have been presented and audited by the county court."

Section 8042, R.S. Mo. 1929, is as follows:

"In all counties in this state where a special road district, or districts, has or have been organized, or where a special road district, or districts, may be organized under this article, and where money shall be collected as county taxes for road purposes, or for road and bridge purposes, by virtue of

any existing law or laws, or subsequent law or laws that may be enacted, upon property within such special district, or districts, or where money shall be collected for pool or billiard table licenses, upon business within such special road district, or districts, the county court shall, as such taxes or licenses are paid and collected, apportion and set aside to the credit of such special road district, or districts, from which said taxes were collected, all such taxes so arising from and collected and paid upon any property lying and being within such special district, or districts, and also one-half of the amount collected for pool and billiard table licenses, so collected from such business carried on or conducted within the limits of such special road district; and the county court shall, upon written application by said commissioners of such special road district, or districts, draw warrants upon the county treasurer, payable to the commissioners of such special road district, or districts, or the treasury thereof, for all that part or portion of said taxes so collected upon property lying and being within such special road district, or districts, and also for one-half the amount so collected for pool and billiard table licenses, so collected from such business carried on or conducted within the limits of such special road district, or districts."

The intent of the Legislature to repeal the provisions of the foregoing sections should very clearly appear and the courts will not hold to repeals by implication if they can find any reasonable ground to hold to the contrary, or if there is any other reasonable construction that can be placed on the statute under consideration, then the implied repeal will not stand. 25 R.C.L. 917, 918.

We also find the rule to be that one act cannot be allowed to defeat another, if by fair and reasonable construction, the two can stand together. 25 R.C.L. 919.

With the foregoing rules of construction in mind, if by a fair and reasonable construction of the foregoing

statutes we can find that all of them can stand, then said Section 7867 should not be so construed that it will repeal by implication the provisions of section 7890, 7891 and 8042 R.S. Mo. 1929 which have heretofore given to the special road districts the taxes levied and collected by the provisions of said sections upon properties in such special road districts.

And by the foregoing rules, Section 7867 should not receive such a construction as to leave said Sections 8042, 7890 and 7891 meaningless, in so far as they apply to the taxes collected for the road and bridge fund which belonged to special road districts before the enactment of the County Highway Commission Act in 1927.

In the case of State ex rel. Columbia National Bank of Kansas City v. Davis, et al., 284 S.W. 464, the court held that a statute should be construed so as to render another statute meaningless, only where the Legislature clearly expressed such intention. In the same case the Court held that statutes seemingly in conflict should be harmonized and force and effect given to each, so far as reasonably possible, as it will not be presumed that the Legislature in enacting a statute intended to repeal an earlier one, unless done in express terms, or to leave on the statute books two contradictory statutes.

Under the foregoing rules of construction, we should harmonize these statutes and not give them such a construction as will repeal any of them by implication.

Said Section 7867 is a part of the Act known as the County Highway Commission Act passed in 1927 by the Missouri Legislature, and is now found in Revised Statutes of Missouri, Article 2, Chapter 42, containing Sections 7856 to 7867 inclusive. By this act it appears that the Legislature was attempting to set up a county highway system of highways, a county highway commission, somewhat similar in powers and duties to the State Highway Commission and was attempting to provide the County Highway Commission with funds from taxes to acquire and maintain the roads under its jurisdiction.

The Act by Section 7861 provides that when any of the roads of the County Highway System pass through or into a Special Road District, it shall be the duty of the treasurer of such special road district to pay over to the highway commission, such proportion of the total road revenue arising therein as the mileage of said county highway within said special road district shall bear to the total number of road mileage therein. From this Section it seems that it would not be necessary to construe Section 7867 so that it will include the taxes belonging to the special road districts

raised by Section 7890, for said Section 7861 gives to the highway commission its proportionate part of the taxes raised by both Sections 7890 and 7891. The County Court has no jurisdiction over the highways of the county highway system, after they are laid off by the commission, and if the system laid out extends over any existing highways of the county, over which the county court has jurisdiction, then it is the duty of the county court to convey such highways to the county highway commission, who shall thereafter have control and supervision over same.

Section 7864 R.S. Mo. 1929 of the county highway commission act authorizes the county court to make additional contributions to the County Highway Commission and as this commission is a new agency and distinct from the county court, the county court must have statutory authority to appropriate any of the tax collections to its upkeep. It is the opinion of this department that the legislature, deeming such authority necessary, placed said Section 7867 in the Act, and by this section the County Court is authorized to expend and appropriate the tax moneys to the up-keep of the roads of the county highway system.

We do not think that the Legislature intended to change the provisions of Sections 7890, 7891 and 8042, in so far as they provide that the moneys collected on properties within the territory of such road districts shall belong to the special road district, except that it provided that if any of the roads of the county highway system pass through such special road district, then the county highway commission shall be entitled to its proportionate part of the road taxes paid in such special road district or to its officers, and provided that the commissioners of the special road district should pay such moneys over to the county highway commission. It also appears that the Legislature, by Section 7867, was attempting to give to the county court authority to appropriate any of the taxes except those belonging to special road districts, which it had been collecting under Section 7890 R.S. Mo. 1929 to the county highway commission for the construction and maintenance of said roads.

CONCLUSION

It is therefore the opinion of this department that Section 7867 R.S. Mo. 1929, does not change or alter the provisions of Sections 7890, 7891 and 8042 R.S. Mo. 1929, in so far as they relate to the taxes which the Special Road Districts have heretofore been getting, for the taxes collected upon the properties in such special road districts, except that the Highway Commission Act requires such special road districts to pay to the county highway commission taxes collected on properties in such district, in proportion to the mileage of the county highway system within such special road district.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
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