

COUNTY COURT: Does not have authority to divert funds derived by levies of special road district for purpose other than that for which same were levied.

Special road district may recover from county funds to which it was entitled under Sec.8042, R. S. Mo. 1929, When.

August 17, 1937

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Dear Sir:

This Department is in receipt of your letter of August 12, wherein you make the following inquiry:

"I am wanting your opinion relative to the construction of section 10818 Missouri Statutes, relating to roads, highways and bridges.

"What I desire to know is whether a county court has any right to withhold any part of a levy for road purposes from a special road district organized under this section, or divert to some county fund or purpose other than the purpose for which it is levied.

"Can a special road district recover from the county money which has been collected as taxes on property in such special road district and used by the county court for other purposes."

The section concerning which you desire a construction, formerly 10818, Revised Statutes of Missouri 1919, is now Section 8042, Revised Statutes

Missouri 1929, Article IX, Chapter 42. Said section being 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 terms of the statute are plain and, we think, mandatory in its terms because the section uses the expression; "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, etc."

In addition thereto, the Supreme Court has passed upon this question in the case of State ex rel. v. Burton, 283 Mo. 41, 1. c. 49:

"It appears from the record that the county court of Randolph County, in May, 1917, levied ten cents on the \$100 valuation of all the taxable property in said county for road purposes; that by virtue of the first proviso, contained in Section 37 supra, the ten per cent collected on all of said taxable property contained in the Moberly Special Road District was properly paid into the county treasury of said county, and belonged to said special road district.

It being conceded that the above amount collected for that purpose was \$4066.40, and due demand having been made for said sum, the right of relator to enforce the payment of same by mandamus, was clearly established. We are, therefore, of the opinion, that the trial court reached an erroneous conclusion as to the disposition of this case."

Again, in the case of Billings Special Road District v. Christian County, 319 Mo. 963, the court said:

"Under Section 10818, Revised Statutes 1919, all taxes for road-and-bridge purposes collected by virtue of any existing law upon property within a special road district must be set aside, as collected, to the credit of such district, and be paid to the treasurer of the district, upon the application of the commissioners of the district."

In view of the above quoted decisions, and there are other decisions in support thereof, we are of the opinion that the county court does not have the right to divert the funds derived by the levies of special road districts for some other purpose other than the purpose for which the same were levied.

In answer to your question as to whether or not the districts can recover money due said district from taxes collected on property in the special road district, the decisions herein quoted are also to the effect that if a timely application was made by the special road district said road district is entitled

to the funds and to recover the same from the county.
State ex rel. Barry County, 302 Mo. 280.

Again, in the case of Billings Special Road
District v. Christian County, 319 Mo. 964, it is said:

"Three several applications by the special road district 'for all funds now in the hands of the county treasurer, belonging to said road district and from whatever source derived,' made in March, November and January of the two years for which the money sued for was collected, is not to be considered as a demand for only a part of the taxes collected during those years, or as a demand made after the fund was spent, or as a demand from which the county court might presume that the district was intending to forego a part of the fund, and relying thereon contracted obligations and used the money to meet them; but the inference to be drawn is that the county court did not, as required by Section 10818, Revised Statutes 1919, as the tax was collected, apportion and set it aside to the credit of the district, but from the beginning of each such year appropriated the part of the tax sued for.

"The statutes require the county to collect road and road-and-bridge taxes, and to set aside and credit all such taxes collected from property in a special road district to the district, which is only a legislative sanction of a method of distribution

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of taxes legally levied, and collected by one public or quasi-public corporation for the use of another, which is the real party in interest and by statute is capable of suing the county for the money so collected.

"A special road district can maintain a timely action at law, such as a suit for money had and received, against the county, for road or road-and-bridge taxes collected by the county from property in the district and appropriated to the use of the county and spent by it."

We are of the opinion that a special road district may recover from the county funds which it was entitled to under Section 8042, Revised Statutes Missouri 1929, if said district makes timely application and demand for the same.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
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