

ROADS AND HIGHWAYS:
SPECIAL ROAD DISTRICTS:
COMMISSIONERS EXPENDING
ROAD FUNDS OUTSIDE OF THE
DISTRICT:

The funds of a special road district
may be expended outside of the dis-
trict under certain circumstances.

April 13, 1939

Honorable Forrest Smith
State Auditor
Jefferson City, Missouri



Dear Sir:

This is in reply to yours of recent date requesting
an official opinion on the following question:

"I would like a written opinion as to
whether a Special Road District can
legally use the revenue collected
within their district for the build-
ing and maintenance of roads outside
of their district; or in other words,
can a Special Road District assist
the County Court by building roads
that are under the jurisdiction of
the County Court from funds arising
on property within the Special Road
District."

In your request you do not refer to what particular
class of special road districts you inquire, but for the
purpose of this answer we will refer to the districts
designated as the eight-mile special road district created
by virtue of the provisions of Article IX, chapter 42,
R. S. Mo. 1929. Such districts, being creatures of the
statute, we will be required to look there for their powers
and duties.

By virtue of the provisions of Section 8042, R. S.
Mo. 1929, the moneys collected as taxes for road and bridge
purposes upon property in the district shall upon timely
application being made therefor, be turned over to the Commis-

sioners of the Special road district. The courts have so construed this statute in a number of cases. One of the latest cases is State ex rel. v. Holman, 264 S. W. 908.

Section 8049, R. S. Mo. 1929, provides as follows:

"Said board shall make and keep on file with the clerk of the board and the clerk of the county court correct plats of all the roads in its district, and duly sectionalized maps of such district, and such sections duly subdivided."

This section also evidences the intention of the lawmakers to confine the jurisdiction of the Commissioners of the road district to that district in which they are Commissioners.

Section 8033, R. S. Mo. 1929, provides in part as follows:

"Said board shall have sole, exclusive and entire control and jurisdiction over all public highways within its district outside the corporate limits of any city or village therein to construct, improve and repair such highways, * * * * *"

Section 8051, R. S. Mo. 1929, provides as follows:

"Said boards may repair, grade, gravel, macadamize or pave any road in its district but nothing herein shall be taken or construed as enlarging the powers of the boards to expend money upon roads and streets within the corporate limits of any city within said special road district as limited by section 8034 of this article."

This section also evidences the fact that the lawmakers intended that the road funds be expended in their own district. In other words, even though this section authorizes the Commissioners to repair, grade and gravel, macadamize or pave any road in the district, still they clearly express their intention that they did not mean by this section that the Commissioners could expend any more than one fourth of the revenue of their district in cities as authorized by Section 8034, R. S. Mo. 1929, which is as follows:

"Said board shall have authority to expend not more than one-fourth of the revenue which may now or which may hereafter be paid into its treasury for the purpose of grading and repairing any roads or streets within the corporate limits of any city within said special road district in conformity with the established grade of said roads and streets in said cities and for the purpose of constructing and maintaining macadam, gravel, rock or paved roads or streets within the corporate limits of any city within the said special road district in conformity with the established grade of said roads and streets in said city; provided that no part of the revenue of any special road district in this state be expended outside of the county in which such special road district is situated."

We find another section under this article which is Section 8036, R. S. Mo. 1929, which authorizes expenditures outside of the district. This section is as follows:

"Said boards may repair, grade, gravel, macadamize, pave or otherwise improve to the distance of 15 miles from any line of such special road

district any highway outside of such district if the same be a prolongation of an improved street or highway in said district and if liberal contributions toward such improvements be made in money, material or labor by the inhabitants interested in such improvements or the county court or any special road district organized under the laws of this state, or the state highway board, or the United States government, or by any one or more of the foregoing. Or in lieu of doing such work in the improvement of such roads such boards may, under the same conditions as would authorize them to do such construction work under this section, contribute toward the repair, grading, graveling, macadamizing, paving or otherwise improving any such highway such an amount as the said board of commissioners may determine, providing the other contributions from any one or more of the sources herein mentioned are liberal contributions toward such improvements and together with the contribution of such board will be sufficient to make and complete such improvement; and provided also, that such work shall be done under plans and specifications and estimate of cost prepared by some competent engineer and approved by such board of commissioners and such contribution of such board shall be paid from time to time only as the work is done or the improvement constructed in compliance with said plans and specifications and on certificate of some competent engineer designated by such board of commissioners and the payments on the work completed shall be in the same proportion as the total contribution of said board bears to the estimated cost of the entire job, and said certificate of the engineer shall show the work completed and the proportional amount of contribution to be

paid thereon."

Section 8047, R. S. Mo. 1929, is a further limitation on the powers of the Commissioners to expend the moneys belonging to the district. This Section is as follows:

"The fund received from the poll and road tax of said district shall constitute a general district road fund, and shall be disbursed only as hereinbefore provided, and shall be used only for working, repairing and improving the public roads of such district as herein provided, and for no other purpose; and no part thereof shall be used for paying damages and costs for opening new roads, but all such damages and costs for opening new roads paid by the county shall be paid out of the other county revenue, except as this article may otherwise provide."

By this section it would seem that the lawmakers intended that all of the funds raised from the property in the district should be expended within that district.

Considering the foregoing sections of the statutes together it is apparent that the lawmakers have intended that all of the district road funds shall be expended in districts except those authorized to be expended outside of the district by virtue of the provisions of said Sections 8034 and 8036.

Since the lawmakers have generally expressed their intention that these moneys be expended in the district and by an exception have expressed on what occasion the Commissioners of the district could expend the district funds outside of the district, then we think the Commissioners would be limited to such expenditures outside of the district to those exceptions set out in said Sections 8034 and 8036. As stated in *Kansas City Power and Light Company v. Smith*, 111 S. W. (2d) 513, "Whenever the statute prescribes that a thing should be done in a certain manner it necessarily prohibits the doing of it

in any other manner." So in this case the lawmakers have stated that the Commissioners may expend money outside of the district as provided by said Sections 8034 and 8036 and by so doing they have indicated that they did not intend for the money to be expended outside of the district under any other circumstances.

The foregoing statements have been based on the condition that the moneys have been turned over to the Commissioners of the district. If the district and county court are of the same mind and agree that there is more than enough money due the district than will be needed, then such funds might be handled in this manner:

By Section 8042, R. S. Mo. 1929, if the Commissioners make timely application for the road funds to do their district, then it is the duty of the county court to turn the funds over to them as they are collected. Speaking of this section the court, in the case of Holloway to use v. Howell County, 240 Mo. 601, l.c. 612, said:

"Closer home and more to the point, it is not alleged in the bill or shown by the proof that the board of commissioners of the district made application to the county court in any of those years for a share of the county revenue raised by the tax levies in question.

"Observe, section 10594, supra, only required the county court to draw warrants upon its treasurer 'as the board of commissioners of such special road district shall make application to such county court.' Such application is made a condition to getting any of the funds. Why was that condition made by the lawmaker? The reasons are manifest. The district might not need the money. So, the county court, charged with the duty of distributing the county revenue and keeping the county on a cash basis, might stand informed by such application of the need and demand and thereby take care to close up the year's business on such basis

by adjusting its general expenditures accordingly."

In our search on the law applicable to the special road districts we do not find where it is required of the Commissioners to make application for all or any part of these funds and if they do not make such application, then at the end of the fiscal year the county court could transfer them to the other proper funds. This rule is suggested in the Howell County case, supra, at l.c. 612, in the following language:

"* * * * It is not clear there was any 'county revenue' left at the end of any year after paying the indebtedness and obligations of the county for the current year. But if there was, then under certain statutory conditions, the county court had the right to transfer it to other proper funds and use it for county purposes for ensuing years or existing deficits, if any, after all contracts entered into with reference to the current year creating present indebtedness had been complied with and all outstanding current county obligations had been satisfied."

So the only way in which the funds raised from the taxes for road purposes on properties in a special road district could be used outside of the district is for the Commissioners to not make application therefor and then at the end of the year the county court could transfer these funds to the proper account as suggested in the Howell County case, supra. The foregoing statement is conditioned on the two exceptions where the Commissioners of the District may expend their funds outside of the district as is provided by said Sections 8034 and 8036 cited above.

CONCLUSION.

From the foregoing it is the opinion of this department that all of the road funds which have been turned over

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to the Commissioners of a special road district must be expended for the purpose of maintaining the roads in that district except those roads upon which such funds may be expended as authorized by virtue of the provisions of Sections 8034 and 8036, supra.

Respectfully submitted

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APPROVED:

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