

SPECIAL ROAD DISTRICTS: Funds of a special road district, when the district comprises territory in two or more counties, may be used in any part of the district regardless of mileage or amount of funds derived from any county

October 7, 1937

Honorable Tom Phelps
Presiding Judge
728 Virginia Avenue
Joplin, Missouri

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Dear Sir:

This department acknowledges receipt of your request for an opinion based on the following facts:

"Jasper Special Road District is located in both Jasper County and Newton County. Most of the district is located in Jasper County and consequently most of the revenue is derived from Jasper County.

"Will you please give us your opinion as to whether this road district can use the revenue received from Jasper County in its roads located in Newton County."

In arriving at a conclusion in answer to your question it is necessary to review certain statutes as well as court decisions.

Section 8042, Revised Statutes Missouri 1929, refers to the funds to be used in the special road district, and, among other others, recites that the county court shall, upon written application by the commissioners of a special road district, or districts, draw warrants upon the county treasurer, payable to the commissioners of such special road district, or districts, for all the part or portion of taxes

collected upon property lying and being within the special road district, or districts.

In the decision of State ex rel. v. Barry County, 302 Mo. 280, it was held 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.

Section 8033, Revised Statutes Missouri 1929, places the sole, exclusive and entire control and jurisdiction over all public highways within the special road district in the board of commissioners, and the manner of appointment and term and qualifications of the board of commissioners is set forth in Section 8026.

Section 8059, Revised Statutes Missouri 1929, relates to the boundary of special road districts and how they may be extended, and contains the following provision:

"* * or if the proposed district shall include parts of more than one county, the county courts of all such counties, shall each make an order of record that the proposed extension of said road district under the provisions of this section, describing the same by its title and the date of its approval, and describing the boundaries of the district* * * *
* * . Each county court shall give notice of such election by publishing the same in some newspaper published in its county.
* * * * The said county court or county courts of each of said counties shall have the ballots for the election in their counties printed * * * * *"

Under Section 7961, relating to the issuance of bonds by special road districts, we call your

attention to the following provision,

"and if such special road district embraces territory in two or more counties, then such notice shall be published in a newspaper published in each of such counties.* * * It shall be the duty of the clerk of the board of commissioners on or before the first day of May in each year, or the state auditor immediately thereafter, in case the clerk of the board of commissioners should fail or neglect, on or before the first day of May of each year, so to do, to certify to the county court of the county, or counties, wherein such road district is situated, the amount of money that will be required during the next succeeding year to pay interest* * * * * .
On receipt of such certificate it shall be the duty of the county court, or courts, at the time it makes the levy for state, county, school and other taxes, to, by order made, levy such a rate of taxation upon the taxable property in the road district in such county or counties, as will raise the sum of money required for the purposes aforesaid."

The above statutes have been quoted for the purpose of showing the intention of the Legislature not to limit the boundaries of a special road district to the confines of any county, but to show that the boundaries of the district may be extended into two or more counties, and, likewise, that the funds derived from taxation may be expended within the district. The only provision in any statute which we find in conflict therewith is Section 8034, 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 explain the apparent conflict on the ground that the section refers to the expending of funds within the corporate limits of a city within a special road district, and refers to a district the boundaries of which are not extended into another or other counties.

In the decision of *Harris v. Compton Bond and Mortgage Company*, 244 Mo. 664, it was held:

"The Legislature in the creation of municipal and public corporations of any description, is absolute and unlimited, in the absence of some specific provision in the State or Federal Constitution restricting and inhibiting such power. In the absence of

some constitutional limitation, the Legislature is vested with the whole power of the State, and may establish any public, political or municipal corporation it deems necessary or expedient to the public interest."

In a controversy arising as to the levy for the purpose of taxation by a special road district which was partly in one county and partly in another, the court, in the case of State ex rel. Road District v. Hackmann, 278 Mo. 602, disposes of the questions in the following language:

"A tax of fifty cents upon each one-hundred-dollar valuation levied by a road district partly in one county and partly in another, does not violate the constitutional rule that all taxes 'shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax.' It is not to be presumed that inequality will arise because of the fact that property in one portion of the district is to be assessed by the assessor of one county and that in another portion by the assessor of the other county.

"Whether a portion of a road district lying in one county may at some future time have to pay a larger road tax than the portion lying in the other county, owing to the fact that by the Act of 1917 county courts may levy a road tax of not more than twenty nor less than ten cents on the

hundred-dollar valuation, is a question not germane to the question of the validity of a uniform tax levied upon all taxable property in the district."

In the decision of State ex rel. Attorney General v. Special Road District, 319 Mo. 1. c. 1251, the court declares the status of a special road district as follows:

"The special road district contemplated by Article 8, Chapter 98, Revised Statutes 1919, is 'a political subdivision of the State for governmental purposes' - a municipal corporation. (Sec. 10834.) It is brought into existence through the exercise of legislative power. (State ex rel. v. Thompson, 315 Mo. 56, 285 S. W. 57.) The proceedings prescribed by statute for its organization must be scrupulously followed. (State ex inf. v. Colbert, 273 Mo. 198, 201 S. W. 52.) With these general principles in mind we proceed to a consideration of the question presented by the record, namely, whether the notice given by the county clerk did not 'set out the boundaries of said proposed district,' as required by the statute, and was therefore a nullity."

CONCLUSION

Applying the terms of the statutes as hereinbefore quoted and mentioned and the decisions cited with reference to special road districts, we find that

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the control, management and expending of the funds is entirely within the discretion of the commissioners as long as the discretion of the commissioners is exercised within the limits of the statutes; that boundaries of special road districts may be located in more than one county; that a special road district is a political subdivision, for governmental purposes, of the State of Missouri.

Bearing in mind these conclusions, we are of the opinion that the funds of the Jasper Special Road District may be expended by the commissioners of said district in any part of the district, irrespective of counties, and the funds, when received by the commissioners, are to be expended any place in the district irrespective of the amounts paid in taxes by each of the counties. In other words, the commissioners do not have to expend the funds in proportion to the taxes derived from each county or in proportion to the number of miles of road in each county, but may expend it on any road or roads which, in their discretion and judgment, the same should be expended on.

Yours very truly,

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APPROVED:

J. E. TAYLOR
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