

COUNTY ROAD AND BRIDGE)
FUND:)

Where county has no highway engineer and county surveyor has not been designated by county court to supervise or substitute for engineer, road and bridge funds shall be placed in one general road fund under Section 7890, R. S. 1929, but must be apportioned to the various road districts under Section 7891, R. S. 1929.

June 2, 1938.

Mr. J. R. Moss
Clerk, County Court
Maries County
Vienna, Missouri



Dear Sir:

This Department is in receipt of your request for an opinion of May 28th, which is as follows:

"I am in dire need of a written opinion in regard to the apportionment of funds collected by the Collector from the general road fund.

"Since our Highway Engineer has been disposed of by a vote of the people, and there is no road boss to give bond in each road district for the handling of the district money, should the money collected for road and bridge purpose be apportioned to the common road districts or placed in one general road fund to be used at the discretion of the County Court."

Your county having dispensed with the services of county highway engineer, it becomes necessary to resort to the terms of Section 8020, R. S. Mo. 1929, to determine how matters relating to roads and bridges shall be governed; said section being as follows:

"In all counties in this state that may vote against the county highway

engineer law in the manner prescribed in section 8019 of this article, all matters relating to roads and highways and the expenditures of the public funds thereon shall be governed by the laws then in force in such counties, except that part of the law pertaining to the appointment of the county highway engineer. In all counties wherein the services of a county highway engineer are dispensed with, as provided by section 8019 of this article, the county surveyor shall be ex officio county highway engineer, and, as such, shall perform such services pertaining to the working, improvement, repairing and maintenance of the roads and highways, and the building of bridges and culverts as provided by this article to be done and performed by the county highway engineer, or as may be ordered by the county court; and for his services as ex officio county highway engineer he shall receive such compensation as may be allowed by the county court, of not less than three dollars nor more than five dollars for each day he may be actually employed or engaged as such county highway engineer. The county court may empower the county highway engineer, or the county surveyor when acting as county highway engineer, to employ such assistants as may be deemed necessary to carry out the court's orders and at such compensation as may be fixed by the court, not to exceed the sum of four dollars per day for deputy county highway engineer nor more than three dollars per day for each other assistant for each day they may be actually employed."

The construction of the above quoted statute and the effect of the same is construed in the case of Spurlock

v. Wallace et al., 204 Mo. App. 674, l. c.677, as follows:

"Section 10572, Revised Statutes 1909, is somewhat ambiguous, as it provides for an Ex-officio County Highway Engineer and defines certain duties as therein specially set out or as may be ordered by the county court. Reading this section by itself, it would appear that there is some reason for appellant's contention, but when the whole section is read in connection with other sections relating to roads, and highways, we are inclined to the construction placed upon the law by the trial judge. It appears that the road, highway and bridge laws were amended in 1909, practically setting up a new system, running through which were certain duties provided for a county highway engineer. It was provided, however, in section 10571 that if a majority of those voting on the proposition at such election voted against the county highway act, then this article and the provision of the law relating to the appointment and duties of a county highway engineer shall not be enforced in such county. Douglas county had voted against the highway engineer act, therefore any duties of a county highway engineer were dispensed with. In section 10572, Revised Statutes 1909, it is provided that all matters relating to roads and highways, and the expenditure of public funds thereon shall be governed by the laws then in force in such counties except that part of the law pertaining to the appointment of the county highway engineer. The latter part of this section also throws light,

as it provides that the county court may empower the county highway engineer or county surveyor to employ such assistance as may be deemed necessary 'to carry out the court's orders.'

"The first road and highway law of Missouri that we find, governing counties such as Douglas, for a county highway engineer, appears in Session Acts of 1907, page 401. Under this act there was no election given to the people to determine for themselves whether there would be a county highway engineer. This law was amended in the 1909 act, which did give the people of the county the right to determine for themselves whether such an officer was desired. The Law of 1907 provided that the compensation for a highway engineer would be not less than \$300, nor more than \$2000, per year, while the Amendment of 1909, under section 10572, permits the county court to make a per diem charge.

"If the contention made by appellant should be upheld, then we must necessarily hold that to vote under section 10571, and to thereunder abolish the highway engineer act, meant simply a change of the manner and amount of compensation to be paid to the party acting as highway engineer, as the appellant is contending that he is duty bound to perform exactly the same service that the highway engineer would have performed even though the people have voted out this law. We cannot lend sanction to this narrow construction, as it would appear that the purpose of sections 10571 and 10572, Revised Statutes 1909, was to permit the people of a county to abolish the office of highway engineer yet to leave it possible for the surveyor to perform the duties that the highway engineer would have performed

had the law not been voted out,
* * * * *

Having determined by the above decision that the county court may order warrants drawn direct to the road overseers without having them approved by the county surveyor if the officer of the highway engineer is abolished, it becomes necessary to consult the statutes relative to the road and bridge levies.

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

"The county courts in the several counties of this 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.'"

By the provisions of the above statute it is plain that the funds derived thereunder are paid into the county treasury as other funds of the county, and by the decision of *Spurlock v. Wallace, et al.*, quoted supra, we are warranted in the conclusion that the county court can exercise its own discretion in paying out the funds in this section. But Section 7891, R. S. Mo. 1929, contains somewhat different provisions. The first portion of it permits the county court to levy not in excess of twenty-five cents on each one hundred dollars valuation to be used for road and bridges. The provisions are as follows:

"* * * Provided, however, that all that part or 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: * * * * *

The phrases, "or other road district," contained in the first proviso, and "the part of said special road and bridge tax arising from and paid upon property not situated in any road district, special or otherwise," found in the second proviso, appear to indicate beyond doubt that it was the intention of the Legislature to have each road district, special or otherwise, apportioned its pro rata part derived from the levy under Section 7891, supra.

June 2, 1938

Conclusion.

We are, therefore, of the opinion that under Section 7891, supra, the road and bridge funds derived under the levy should be apportioned to the common road districts instead of being placed in one general road fund, the same to be paid out in a like manner as mentioned above.

Referring again to Section 7890, it would appear that Section 7867, R. S. Mo. 1929, likewise governs the disposition of the funds; said section being as follows:

"All taxes derived from the levy authorized by section 7890, R. S. 1929, are hereby appropriated to the use of the county court in each county where levied, to be used at the discretion of 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."

We are, therefore, of the opinion that the funds derived under the levy of Section 7890, supra, should be placed to the credit of the county road and bridge fund and the county court can exercise its own discretion in paying out the funds derived from this section.

Respectfully submitted,

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Assistant Attorney-General

APPROVED:

J. E. TAYLOR
(Acting) Attorney-General

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