

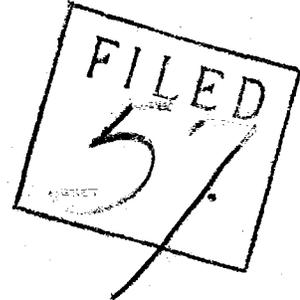
TAXATION:
SPECIAL ROAD DISTRICTS:

The fiscal, calendar and financial year of a county begins on the 1st day of January and ends on the 31st day of December. Warrants accruing in 1939 cannot be paid out of the taxes assessed for 1940 unless a surplus over and above county expenses in 1940.

April 9, 1941

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Honorable G. Logan Marr
Prosecuting Attorney
Morgan County
Versailles, Missouri



Dear Sir:

We are in receipt of your request for an opinion under date of April 7, 1941, which reads as follows:

"The county court has been handling special road districts in this county in February in regard to the appointment of any vacancies on the board of commissioners and in regard to the settlement of accounts.

"Section 8699 states that settlements are to be made annually in August of each year.

"In February of each year after the taxes of the preceding year are collected, the apportionment is made to the specials.

"This has created some confusion as to when does the fiscal year actually begin and end.

"If the taxes are to pay current revenues, what year taxes are meant to pay the debts? For instance read section 8702-1939, which limits the debts to the annual yearly income and revenue.

"For instance, debts are made in 1940, and the 1940 taxes based on the June 1, 1939 assessment, and the levy of May

1940; yet the 1940 taxes are not paid over until February 1941. Is that apportionment paid in 1941 for 1940 debts or for debts of 1941?

"-1-

"When does the fiscal year actually begin and end?

"-2-

"What years taxes are meant in fixing a debt limit within the annual income and revenue of any one year?"

I presume you are referring in this request for an opinion to the eight-mile special road district as organized under Section 8673, R. S. Missouri 1939.

Section 8526, R. S. Missouri 1939, reads 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.'"

It will be noticed under the above section that the levy for a road tax shall be collected and paid into the county treasury as other revenue, that is, this ordinary road tax is the same as the payment of state and county ordinary tax. It will also be noticed in this section that the levy is made in May and, of course, this levy is made for the collection of taxes to be used for road purposes in the following year and warrants drawn on the county

treasury for road purposes in the following year shall be paid out of the taxes levied in May and collected in the previous year.

Section 8526, supra, is authorized under Section 12, Article 10 of the Missouri Constitution.

Section 8527, R. S. Missouri 1939, provides for an additional levy to that as levied under Section 8526, supra, but contains special provisions as to the allocation of that tax and special allocation of the tax levied and collected in certain districts.

Section 8527, R. S. Missouri 1939, is authorized by Section 22, Article 10 of the Missouri Constitution which reads as follows:

"In addition to taxes authorized to be levied for county purposes under and by virtue of section 11, article X of the Constitution of this State, the county court in the several counties of this State not under township organization, and the township board of directors in the several counties under township organization, may, in their discretion, levy and collect, in the same manner as State and county taxes are collected, a special tax not exceeding twenty-five cents on each \$100 valuation, to be used for road and bridge purposes, but for no other purpose whatever; and the power hereby given said county courts and township boards is declared to be a discretionary power."

It will also be noticed in the above section that this constitutional section specifically states "may in their descretion, levy and collect, in the same manner as state and county taxes are collected, * *"

Under Section 8699, R. S. Missouri 1939, the board of commissioners shall make an annual settlement.

This section does not mean that this date in August is the end of the fiscal, financial, or calendar year. This section will be touched upon later in this opinion in the case of Union Trust & Savings Bank v. City of Sedalia, 254 S. W. 28.

Section 8702, R. S. Missouri 1939, reads as follows:

"Such board may issue warrants on the treasurer of the board in payment of the expenses and obligations which the board are authorized to incur in behalf of such special road districts and such warrants may be issued in anticipation of the income and revenue provided for the year for which the debt or obligation for which the warrant is issued was incurred; but such districts or such board on behalf thereof shall not become indebted in any manner or for any purpose to an amount exceeding in any one year the income and revenue provided for such year: Provided, however, that this shall not prevent the incurring of indebtedness under bond issue as is or may be provided by law."

This section is authorized under Section 12 of Article 10 of the Missouri Constitution. Under this section warrants issued for 1940 can only be paid out of the money raised by assessment and collection of taxes made for the year 1940 but assessed in the year 1939. Taxes levied, assessed and collected in 1940 for the year 1941 can only be used for the payment of warrants accruing in the year 1941 and not for warrants accrued in the year 1940.

In the case of State ex rel. v. Johnson, 162 Mo. 621, 1. c. 631, the court, in passing upon this question, said:

"This section then had been the law of this State for twenty years before the adoption of the Constitution of 1875. Prior to that, it was not necessary that a county warrant should be drawn upon a special fund or that it should come to the holder during the year in which the indebtedness was created. What, then, was the effect of the Constitution upon this section? As was ruled in *Andrew County v. Schell*, 135 Mo. 31, and *State ex rel. v. Payhe*, 151 Mo. 670, that section was modified by the Constitution to the extent that thereafter the warrants drawn by the county court in any year to meet all the necessary and current expenses for that year must first be paid in full in the order of their registration, and if a surplus was left, then the section operated on all other warrants just as it had previous to the adoption of the Constitution of 1875. In a word, that section, in so far only as it conflicted with the provisions of section 12 of article 10 of the Constitution, became inoperative by force of the Constitution as soon as it went into effect, because inconsistent therewith. But with this exception there is no such repugnancy as requires us to hold it was absolutely repealed, the rule of construction being that before it shall be construed as repealed by implication only, the two must be so repugnant that both can not stand, and, we think, with the modification we have mentioned, both can stand. Such has been the opinion of the Legislature, we think, from the fact that this section has been preserved through three revisions since the adoption of the Constitution. We conclude that this surplus, after the cur-

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rent expenses for the years 1895 and 1896 had all been paid, at once became subject to this general statute, section 3166, Revised Statutes 1889, which provides a just and equitable rule for the payment of the debts of the counties. The preferred right of payment according to registration is not taken away further than the changed condition wrought by the Constitution requires, and when the Constitution is read into and with this section, it merely changes the order of payment so that the funds provided for each year's expenses is primarily the fund out of which warrants drawn for those expenses are to be paid according to their presentation and registration in that year, and when they are all paid and a surplus, as in this case, remains, then it is applicable to unpaid warrants of former years and section 6771, Revised Statutes 1899, provides the rule of priority just as it did before its modification by the Constitution of 1875, and the surplus is not to be distributed pro rata."

The levy for ordinary road tax made in May in accordance with Section 8526, supra, is a levy made in the same manner as other taxes and is for the following year. If the levy is made in 1941, it is for the payment of road expenses in the year 1942.

The whole of your request depends on the answer to your two questions marked 1 and 2, which read as follows:

"-1-

"When does the fiscal year actually begin and end?"

"-2-

"What years taxes are meant in fixing a debt limit within the annual income and revenue of any one year?"

In passing on the construction of Section 16, Article 10, Constitution of Missouri, and Section 8702, supra, the Supreme Court in *Hawkins v. Cox*, 66 S. W. (2d) 539, l. c. 542, 334 Mo. 640, said:

"This road district is given authority under section 8065, R. S. 1929 (Mo. St. Ann. section 8065, p. 6857), to construct, improve, and repair highways and bridges and is enjoined to keep same in good condition, and to this end is authorized to 'employ hands and teams' and to 'rent, lease or buy teams, implements, tools and machinery; all kinds of motor power, and all things needed to carry on such work.'

"The question presented here is whether the road district in question exceeded its powers in this respect, under its then financial condition, in making the contract of purchase just referred to, and, if so, to what extent. We think the first question must be answered in the affirmative. Municipal corporations, such as are special road districts, are by our Constitution placed on what has been termed a cash basis. This has been accomplished by the provisions of section 12, article 10, of the Constitution, which provides that 'no county, city, town, township, school district or other political corporation or subdivision of the State shall be allowed to become indebted in any manner or for any purpose to an amount exceeding in any year the income and revenue pro-

vided for such year, without the consent of two-thirds of the voters thereof voting on such proposition, at an election to be held for that purpose.' The plain meaning of this constitutional provision is that any such municipal corporation may spend or contract to spend (become indebted) 'in any (calendar) year the income and revenue provided for such year,' but beyond that it cannot go in creating a debt for any purpose or in any manner, except by consent of two-thirds of the voters. This was so held in *Book v. Earl*, 87 Mo. 246, where this court said: 'The contracting of a debt in the future, by the county in any manner or for any purpose, in any one year exceeding the revenue which the tax authorized to be imposed would bring into the treasury for county purposes for such year, unless expressly authorized to do so by the assent of two-thirds of the voters' is prohibited. '* * * The evident purpose of the framers of the constitution and the people who adopted it was to abolish, in the administration of county and municipal government, the credit system and establish the cash system by limiting the amount of tax which might be imposed by a county for county purposes, and limiting the expenditures in any given year to the amount of revenue which such tax would bring into the treasury for that year. Section 12, supra, is clear and explicit on this point. Under this section the county court might anticipate the revenue collected, and to be collected, for any given year, and contract debts for ordinary current expenses, which would be binding on the county to the extent of the revenue provided for that year, but not in excess of it.'

It will be noticed in the above opinion that the court specifically states in any calendar year the income and revenue provided for such year. Calendar year, according to the decisions of our court in reference to Section 12, Article 10 of the Missouri Constitution, means from January 1 until December 31 where the question of the finances of a county or city is involved. It was so held in the case of Union Trust & Savings Bank v. City of Sedalia, 254 S. W. 28, l. c. 30, par. 1, where the court said:

"Section 70 of the act of the Thirty-Seventh General Assembly (Laws of 1893, loc. cit. 77) pleaded in the petition and mentioned in the bonds, so far as applicable reads:

"The mayor and council shall also have the power, by ordinance, to issue bonds, payable in one year, to an amount not exceeding half the current revenue for the fiscal year, and also to issue bonds in renewal of other bonds of the city maturing for the requisite amount, and which the city has no fund to pay: Provided, however, that such renewal bonds shall not bear any greater rate of interest than did the original bonds, and shall not run for a longer time than ten years.'

"We have italicized the words 'fiscal year' above, because around these hover all the troubles in the case. The statute must be read in the light of section 12 of article 10 of the Constitution if such provision of the Constitution limits the meaning of the words in this statute of 1893, which is now section 8275, R. S. 1919. The applicable portion of the constitutional provision reads:

"No county, city, town, township, school district or other political

corporation or subdivision of the state shall be allowed to become indebted in any manner or for any purpose to an amount exceeding in any year the income and revenue provided for such year, without the assent of two-thirds of the voters thereof voting at an election to be held for that purpose.'

"It will be noted that the words used are 'exceeding in any year the income and revenue provided for such year.' The Constitution says nothing about a 'fiscal year.' The words used, and especially the latter words in the question last above, indicates what might be termed a 'revenue year,' or a 'debt-creating year.' The limitation is that the city cannot become indebted in any year in excess of the income and revenues provided for such year. Does this mean a calendar year, or will it permit a 'fiscal year' to be established which would cover a different twelve months?

"The qualifying word 'fiscal' is the thing upon which appellant hangs its hopes. Law writers and lexicographers have thus defined the word: In Black's Law Dictionary, fiscal is defined as 'relating to the fisc or public treasury; relating to accounts or to the management of revenue.' In Rapalje & Lawrence's Law Dictionary it is defined as 'belonging to the exchequer, revenue or public treasury.' Bouvier's Law Dictionary defines it as 'belonging to the fisc or public treasury.'

"The term 'fiscal year' is defined by the leading lexicographers as follows: Funk & Wagnall's New Standard Dictionary

defines the term 'fiscal year' as 'the financial year at the end of which the accounts are balanced.' Webster's International Dictionary defines fiscal year as 'the year by or for which accounts are reckoned, or the year between one annual time of settlement or balancing of accounts, and another.'

"The Constitution says nothing about a 'fiscal year.' It simply uses the term 'year.' As to counties, the word 'year' as found in section 12 of article 10, Missouri Constitution, which we have quoted supra, has been held to mean a calendar year, or a year beginning January 1st and ending December 31st. *Wilson v. Knox County*, 132 Mo. 387, 34 S. W. 45, 477; *State ex rel. Appleby*, 136 Mo. 408; 37 S. W. 1122; *State ex rel. v. Allison*, 155 Mo. 335, 56 S. W. 467.

"The *Wilson* case was the united opinion of our court in banc. No diverse opinion appeared until the *Allison* Case, 155 Mo. loc. cit. 335, 56 S. W. 467, wherein Gantt, C. J., and Burgess, J., dissented; Gantt, C. J., in an opinion filed. The majority opinion followed the *Wilson* Case, supra, in which opinion, Gantt and Burgess, JJ., then concurred. They departed from the rule, however, in the *Allison* Case, supra. So that, up to this date, the word 'year' in said section 12 of article 10 of the Constitution means a calendar year, so far as counties are concerned. Why not as to cities? But this question, and the alleged distinction between counties and cities, later."

Hon. G. Logan Marr

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CONCLUSION

In view of the above authorities and especially the case of Union Trust & Savings Bank v. City of Sedalia, 254 S. W. 28, it is the opinion of this department that the fiscal year, financial year or calendar year as to the finances of the county such as is limited under Section 12, article 10 of the Constitution of Missouri and Section 8702, R. S. Missouri 1939, the year begins on January 1st and ends on December 31st, notwithstanding that the board of commissioners of the road district are compelled to make their annual settlement in August as set out in Section 8699, R. S. Missouri 1939.

It is further the opinion of this office that debts accruing in any one calendar, fiscal or financial year is only payable out of the money levied and collected in the previous year for the year that the debt accrued.

Respectfully submitted

W. J. BURKE
Assistant Attorney General

APPROVED:

VANE C. THURLO
(Acting) Attorney General

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