

ROAD DISTRICTS: In re: Surplus monies in a Road District's Sinking Fund cannot be transferred to other funds for other purposes until the principal indebtedness and the interest thereon, has been extinguished.

March 8, 1946

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Honorable Wilbur F. Daniels
Prosecuting Attorney, Howard County
Fayette, Missouri

Dear Sir:

This will acknowledge receipt of your letter of recent date requesting an official opinion of this department, which letter reads as follows:

"I respectfully request your opinion as to whether or not the Fayette Special Road District can transfer money that it has in its sinking fund to the general fund in order that they may expend said sums accumulated in the sinking fund for the current upkeep and repair of their roads.

"The facts are that the sinking fund has built up considerable in excess of the sums required to retire interest and principal bonded indebtedness and the district desires to use said surplus for current repair."

Section 3279, R. S. 1939, in part, provides:

"The various counties in this state* * * and road districts in this state, are hereby authorized* * * to fund or refund any part or all of their bonded or judgment indebtedness, including bonds, * * *"

The above quoted parts of Section 3279, supra, authorize the road districts in this State to fund their indebtedness. The term "road districts" first appeared in the Laws of 1931, at page 138, which provided for an entirely new section, the present section, in lieu of Section 2892 of the Laws of 1929. This is the first time that the term "road districts" appeared in the statutes.

Section 3282, R. S. Mo. 1939, provides as follows:

"Any county, city, village, town, township, parts of townships or school district, issuing its bonds for the purpose aforesaid, shall, at the time of issuing the same, provide in the express manner provided by law for the levy and collection of an annual tax sufficient to pay the annual interest on such funding bonds as it falls due, and a sufficient sinking fund for the payment of the principal of such bonds when they become due."

Herein lies the power for the establishment of a sufficient sinking fund for the payment of the incurred indebtedness and interest thereon. While section 3282, supra, does not specifically list "road districts", the case of School District vs. Day, 328 Mo. 1105, 438 S. W. (2d) 328, held that this section (section 3282, supra,) should be construed with Section 3279, supra, and also we believe the rule of pari materia applies, (State ex rel. Brokaw vs. Board of Education, 171 S. W. (2d) 75) so that the following sections apply to road districts, even though not specifically referred to in the particular section.

Section 3283, R. S. Mo. 1939, provides for the disposition of funds raised by the sale of bonds. In its applicable parts it provides as follows:

"When any bonds shall have been voted or may hereafter be voted, * * * the proceeds from the sale thereof, and all moneys derived by tax levy for interest and sinking fund, * * * shall be kept by the authorities of such town, city, township, county, drainage, levee, county or school district having control of said funds, separate and apart from any and all other funds of said town, city, township, county, drainage, levee, county or school district, so that there shall be no commingling of said funds with any other funds of * * *. In no case shall the proceeds from the sale of any bonds so sold be used for any other purpose than for the purpose for which said bonds were voted, nor shall the sinking fund or interest collected to meet the interest on said bonds be used for any

other purpose than to meet the principal and interest of said bonds."

Further emphasis to the directions contained in Section 3283, supra, are found in Section 3284, R. S. Mo. 1939, which provides a penalty for violation of any of the sections contained in Section 3283, supra.

Section 3290 of the same chapter provides:

"No money collected nor bonds purchased under the provisions of this article shall be subject to execution, nor liable to be levied upon, taken, sequestered or applied toward paying the debts of such county, city, town, village, township or school district, nor for any other purpose than as is provided for in this article, and the same shall be held and deemed an inviolable sinking fund for the purpose of extinguishing such county, city, town, village, township or school district indebtedness, and for no other purpose: Provided, that any state or United States bonds or money that may be left over after the extinction of all such county, city, town, village, township or school district indebtedness shall be paid into the general revenue fund of such county, city, town, village, township or school district."

In construing the above quoted sections, it is seen that there is a direct and specific statutory prohibition against the transfer, diversion or commingling, of any funds to or for any purpose other than that for which said funds were created. However, Section 3290, supra, does provide for the transfer of funds when the indebtedness for which said funds were raised has been extinguished and there remains, out of said funds, a surplus. Under the facts stated in your letter, apparently, the indebtedness, as to the interest and principal, can be met and fully satisfied with a surplus remaining. But, until such debt is fully satisfied, we believe that Section 3290, supra, does apply.

CONCLUSION

It is, therefore, the opinion of this department that, under the statutes cited supra, and the directions contained therein, the surplus monies, contained in the Fayette Special Road District Sinking Fund, can not be transferred to the general revenue fund until the principal bonded indebtedness and the interest thereon has been extinguished.

Respectfully submitted,

WILLIAM C. BLAIR
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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