

SPECIAL ROAD DISTRICTS:

A special road district newly organized is entitled to its portion of the funds collected and unexpended at the time the district came into existence.

F I L E D

JOHN M. DALTON
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February 24, 1953

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John C. Johnsen
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Mr. Charles E. Murrell, Jr.
Prosecuting Attorney
Knox County
Edina, Missouri

Dear Mr. Murrell:

We have given careful consideration to your request for an opinion, which request is as follows:

"There was organized in Knox County, Missouri, a special road district under the provisions of Section 233:010 to 233:165 R.S.M.O., 1949 effective January 5th of this year, 1953.

"I would like an opinion from your office as to what funds are to be turned over to the special road district by the County Treasurer. Would taxes collected during the year 1952 be turned to the new special road district or would only the tax collected after the effective date, January 5, 1953, of the organization of the district be turned to the new district?

"We are particularly interested in the disposition of the tax collected in December 1952, and would like to have your opinion on this matter as soon as possible in order that the County Treasurer can make immediate disposition of the tax collections."

The question contained in your request is governed for the most part by Sections 233.125 and 137.555, RSMo 1949. Section 233.125 provides that in any county where

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a special road district has been organized under Sections 233.010 to 233.165, and where money shall be collected for road and bridge purposes under Section 137.555 upon property within such special road district, the county court shall apportion and set aside to the credit of such special road district four-fifths of such portion of said road and bridge tax collected and paid upon any property lying and being within such special road district. This section also provides that the county court shall apportion and set aside to the credit of the special road district one-half of the amount collected as licenses on pool and billiard tables from such business carried on within the limits of such special road district.

Section 137.555 authorizes the county court to levy a tax, not to exceed thirty-five cents on each one hundred dollars assessed valuations, on the property of the county to be used for road and bridge purposes. It is provided, however, that four-fifths of said tax collected and paid upon any property lying and being within any special road district shall be placed to the credit of such special road district and paid over to such district upon warrants of the county court. This is the same mandate as that contained in Section 233.125.

The law, as described above, is perfectly clear as to what funds must be turned over by the county court to a special road district already established at the time the taxes are collected. But there is nothing in the statutes to indicate just what funds are available for a newly organized special road district. Neither can we find any Missouri court decisions to assist us in coming to an answer to this question. We must, therefore, undertake to determine the intent of the legislature and apply the rule of reason in an effort to construe the statutes above mentioned.

Evidently the law contemplates the functioning of a special road district as soon as it shall come into existence. It does not stand to reason to conclude that the district must withhold its operations until the revenues for the coming year can be collected. The district starts off with a board of commissioners, and it is provided in Section 233.070, RSMo 1949, that the "board shall have sole, exclusive and entire control and jurisdiction" over the construction, improvement and repair of the public highways in the district. This means that the county court cannot expend any portion of the road and bridge fund on the highways of the district.

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This money, which by rights belongs to the district, can be made available for the district only by turning it over to the board of commissioners.

This conclusion is in accord with the decision of the Supreme Court of California in Signal Hill v. County of Los Angeles, 196 Cal. 161. In that case the statute construed by the court was more definite than the Missouri law is, but the same question was under consideration. In the course of that opinion, on page 168, the court said:

" * * * In the determination of that question as applied to the present case, we find no difficulty in concluding that it was, and is, the duty of the respondents to ascertain without delay the amount of general road tax moneys derived from the property and persons in the territory in question and unexpended at the time of the incorporation of the new city, and the amount of highway taxes then levied and in course of collection and so derived and to pay the same to the proper officer of the petitioner as soon as practicable. * * *"

CONCLUSION.

It is the opinion of this office that a special road district organized under Sections 233.010 to 233.165, RSMo 1949, effective January 5, 1953, is entitled to its portion of the revenues provided in Sections 233.125 and 137.555, RSMo 1949, collected in 1952 and unexpended at the time the said district came into existence.

This opinion, which I hereby approve, was prepared by my Assistant, Mr. B. A. Taylor.

Very truly yours,

JOHN M. DALTON
Attorney General

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