

Attorney General of Missouri

POST OFFICE BOX 899

JEFFERSON CITY, MISSOURI 65102

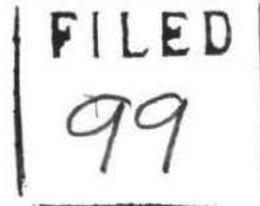
(314) 751-3321

JOHN ASHCROFT
ATTORNEY GENERAL

March 17, 1981

OPINION LETTER NO. 99
(Answer by Letter-Klaffenbach)

The Honorable Travis Morrison
Representative, 152nd District
Route 1
West Plains, Missouri 65775



Dear Mr. Morrison:

This letter is in response to your question asking:

Under section 233.195, RSMo 1978, county courts must place to the credit of road districts four-fifths of that portion of the tax arising from and collected and paid upon any property within such road district. No mention is made of what must be done with the remaining one-fifth. May a county legally give each such road district this remaining one-fifth?

We understand that your question concerns a third class county not under township form of government.

Section 233.195, RSMo, provides in pertinent part:

1. County courts shall cause to be set aside and placed to the credit of each road district so incorporated four-fifths of such part or portion of the tax arising from and collected and paid upon any property lying and being within any such district, by authority of section 137.555, RSMo. All revenue so set aside and placed to the credit of any such incorporated district shall be used by the commissioners thereof for constructing, repairing and maintaining bridges and culverts within the district, and working, repairing, maintaining and dragging public roads within the district and paying legitimate administrative expenses of the district, and for such other purposes as may be authorized by law.

The Honorable Travis Morrison

Section 137.555, RSMo, which is referred to in § 233.195, provides:

In addition to other levies authorized by law, the county court in counties not adopting an alternative form of government and the proper administrative body in counties adopting an alternative form of government, in their discretion may levy an additional tax, not exceeding thirty-five cents on each one hundred dollars assessed valuation, all of such tax to be collected and turned into the county treasury, where it shall be known and designated as 'The Special Road and Bridge Fund' to be used for road and bridge purposes and for no other purpose whatever; 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 special road district shall be paid into the county treasury and four-fifths of such part or portion of said tax so arising from and collected and paid upon any property lying and being within any such special road district shall be placed to the credit of such special road district from which it arose and shall be paid out to such special road district upon warrants of the county court, in favor of the commissioners or treasurer 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 special road district and the one-fifth part retained in the county treasury 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.

As can be seen from our quotation of the provisions of § 137.555, such funds are to be paid into The Special Road and Bridge Fund to be used for road and bridge purposes and for no other purposes whatever, except that the four-fifths, as provided, is paid to the special road district and except that the

The Honorable Travis Morrison

part of said special road and bridge tax arising from and paid upon the property not situated in any special road district and the one-fifth part retained in the county treasury 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.

In our Opinion No. 36, dated January 18, 1968, to Parish, copy enclosed, this office concluded that a county court of a third class county may expend the one-fifth portion of its \$ 137.555 monies on roads in a special road district but not on bridges in a special road district. Although the question of whether the county court may give the special road district the one-fifth portion was asked in that opinion, such question was not answered.

Since the legislature has provided for the exact use of these funds and has not authorized the county court to give such special road district the remaining one-fifth portion of said tax, we conclude that the county court has no authority to give such one-fifth portion to the special road district for use for either roads or bridges.

Very truly yours,



JOHN ASHCROFT
Attorney General

Enclosure
Att'y Gen. Op. No. 36,
Parish, 1/18/68