

COUNTY BUDGET ACT: Special tax levy of .07 authorized by section 7891 is not to be included in the term revenue as used in the Budget Act.

January 21, 1936.



Honorable O. A. Kamp
Prosecuting Attorney
Montgomery County
Montgomery City, Missouri

Dear Sir:

This department is in receipt of your letter of January 8, 1936, wherein you present a question involving the funds for taxes levied for special road and bridge purposes as they may be affected by the County Budget Act. Your letter is as follows:

"The County Clerk, has asked me to obtain an opinion from your office on the following question.

"Should a tax levied for a special purpose such as a .07 levy for road and bridge purposes, be budgeted under the County Budget Law of 1933? Is it to be considered as a County Revenue and budgeted as other revenue?"

"I will thank you for your opinion on this question."

In 1933 the Legislature passed what is termed the County Budget Act. The first eight sections are applicable to counties of the population of Montgomery County. Under Section 1, page 340 of the Act, we find the following provision:

"Whenever the term revenue is used in this act it shall be understood and taken to mean the ordinary or general revenue to be used for the current expenses of the county as is provided by this act regardless of the source from which derived."

Another provision is as follows:

"The receipts shall show the cash balance on hand as of January first and not obligated, also all revenue collected and an estimate of all revenue to be collected, also all moneys received or estimated to be received during the current year."

Under Section 2, page 341, the County Court has the duty of classifying proposed expenditures in five different definite classes within a reserve to be placed into class six.

Under Section 4, page 343, under the classifications of "Estimated Receipts" is the following:

"Estimated from taxes for ordinary revenue for current year.

"Other revenue (each source shall be stated separately) estimated.

"Total estimated county revenue for the current year from all sources."

In classifying the proposed expenditures and the current revenue of the county for any one year, the repair and upkeep of roads is not mentioned by the Legislature. Class 3 is as follows:

"The county court shall next set aside and apportion the amount required, if any, for the upkeep, repair or replacement of bridges on other than state highways (and not in any special road district) which shall constitute the third obligation of the county."

Section 9874 R. S. Mo. 1929, which was expressly repealed by the County Budget Act, contained the following provision relating to roads and bridges:

"II. A sum sufficient for the payment of all necessary expenses for the building of bridges and repairing of roads, including the pay of road overseers of such county."

Thus it will be noted that the repairing and upkeep of roads and bridges was formerly contained in one class of the county revenue, prior to the passage of the County Budget Act, but the County Budget Act refers only to the repair and upkeep of bridges and contains no class or provision relating to the repair and upkeep of roads. Therefore, we are confronted with the question of what is included in the expression used by the Legislature, namely: "for the current expenses of the county as is provided by this act regardless of the source from which derived."

Section 9867, R. S. Mo. 1929, is as follows:

"The following named taxes shall hereafter be assessed, levied and collected in the several counties in this state, and only in the manner, and not to exceed the rates prescribed by the Constitution and laws of this state, viz: The state tax and the tax necessary to pay the funded or bonded debt of the state, the funded or bonded debt of the county, the tax for current county expenditures, the taxes certified as necessary by cities, incorporated towns and villages, and for schools."

Section 9986, R. S. Mo. 1929, related to the division of the county revenue, but said section was expressly repealed by the Legislature in enacting the County Budget Act.

Relating to current county expenditures, the court in the case of State v. St. Louis-San Francisco Ry. Co., 247 S. W. 182, 1. c. 184, said:

"The revenue collected to pay past indebtedness must be applied to that purpose and may not be apportioned under section 12866 for current county expenditures. State ex rel. v. Hortsman, 149 Mo. 290, 297, 50 S. W. 811. Current county expenditures mean expenditures for the year for which the taxes were levied. State ex rel. v. Payne, 151 Mo. 663, 673, 52 S. W. 412. The only tax that a county court

may levy on its own initiative is that for the payment of county current expenditures, as authorized by section 12859, R. S. No other tax for any purpose shall be assessed, levied, or collected, except as authorized by section 12860. In this case the additional 10-cent levy was made by the order of the circuit judge in vacation."

Under Section 7890, R. S. Mo. 1929, which is 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 is the duty of the County Court to levy a tax of not more than twenty cents on the one hundred dollar valuation as a road tax, and the same shall be paid into the county treasury as other revenue. Section 7891, R. S. Mo. 1929, is the section under which your county has levied the tax of .07, and is known as the special road and bridge tax, said section being as follows:

"In addition to the levy authorized by the preceding section, the county courts of the counties of this state, other than those under township organization, in their discretion may levy and collect a special tax not exceeding twenty-five cents on each one hundred dollars valuation, to be used for road and bridge purposes, but for no other purposes whatever, and the same shall be known and designated as 'the special road and bridge fund' of the county. 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: Provided further, that no warrant shall be drawn in favor of any road overseer until an account for work done or materials furnished shall have been presented and audited by the county court.

The Supreme Court in the case of State ex rel. v. Wabash Ry. Co. 319 Mo. 302, said:

"The levy provided by section 7890, R. S. Mo. 1929, is a levy for county purposes within the meaning of section 9873 and the 10% restriction as to increased applies. The levy authorized by section 7891 is no part of the county levy, and the

Hon. O. A. Kamp

-6-

January 21, 1936.

restriction of section 9873 as to a levy that will produce revenue in excess of 10% of that received the previous year does not apply."

CONCLUSION

- - - - -

We are of the opinion that the revenue derived from a tax levied under section 7891, and revenue raised by similar methods, or in the same category, is not subject to the terms of the County Budget Act, and it is not incumbent upon the County Court to include the same in qualifying the expenditures of a county for any one year.

Respectfully submitted

OLLIVER W. NOLEN
Assistant Attorney General.

APPROVED:

JOHN W. HOFFMAN, Jr.
(Acting) Attorney General.

OWN:H