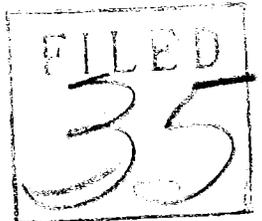


ROADS AND BRIDGES: Taxpayer, in special road district, must also pay, in addition, general taxes issued for road purposes. Bonds voted on by entire township must also be paid by taxes received from a special road district where no outstanding bonds are against the special road district or any part of the special road district.

January 20, 1941

Honorable Charles S. Greenwood  
Prosecuting Attorney  
Livingston County  
Chillicothe, Missouri

1-24



Dear Sir:

We are in receipt of your opinion request, under date of January 13, 1941, which reads as follows:

"A question is being raised by some of the citizens of this county, taxpayers in one of the Municipal Townships, upon which I would like to have your advice and instructions.

"Livingston County has adopted and is operating under the Township Organization Law. In one township there is a Special Road District, consisting, however, of only a portion of the township and altogether in that particular township.

"The rate of taxation allowed by the Constitution in this County is \$.50 on the \$100.00 valuation, of which the County Court levies, 80% for County purposes and 20% for township purposes. The citizens who reside in this road district feel that they ought not to pay as much as 10¢ on the \$100.00 valuation for township purposes in view of the fact that, as they say, a portion of the levy for township purposes is used on the public roads in the township outside of the special road district. They insist that the purposes for which

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tax should be levied should be collected only for township charges under Section 12303, and that they ought not to be taxed for road purposes and that they ought not to be charged and required to pay taxes for use on roads outside of the Special Road District."

In answer to the first part of your request, as above set out, I am enclosing copy of an opinion rendered to the Honorable Forrest Smith, State Auditor, on July 2, 1934, which I believe fully answers your request. In that opinion this department held that in view of Section 22, Article X of the Constitution, persons in special road districts also were liable for the general road and bridge tax levied by the township board. This opinion almost answers the second part of your request which reads as follows:

"There is another question which some of them are raising and that is:-- Recently the township voted bonds for construction of gravel roads apparently without recognizing the fact that this Special Road District has sole charge of the public roads within its district; but these citizens say that the bonds were voted by the entire township and some of them question the validity of the bonds and of the tax levied to raise a sinking fund and to pay interest on these bonds.

"I would like to have any suggestions that you feel justified in making as to what opinion I would be justified in giving to these people with respect to these two questions."

Section 12304, Article 8, Chapter 86, R. S. Missouri 1929, which applies to township organization, reads as follows:

"The moneys necessary to defray the township charges of each township shall be levied on the taxable property in such township, in the manner prescribed in the general revenue law for state and county purposes."

Under the above section the levying of a tax reverts back to the general revenue law for state and county purposes.

Under Sections 7957, 7958 and 7959, R. S. Missouri 1929, which apply to bond elections, the county court has the authority to issue bonds for the improvement of public roads. Also, under Section 7960, R. S. Missouri 1929, the board of commissioners of any special road district and the county courts of the several counties on behalf of any township in their respective counties are authorized to issue road bonds. Sections 7961 and 7962, R. S. Missouri 1929, apply to the election for the issuing of said bonds. Section 7964, R. S. Missouri 1929, reads as follows:

"The four next preceding sections, to-wit: sections 7960, 7961, 7962 and 7963, R. S. 1929, shall not apply to any township, the whole or any part of which is included in a special road district that has issued bonds, the whole or any part of which are outstanding and unpaid; nor shall said sections apply to any special road district which includes the whole or any part of any township which has issued bonds for road purposes, the whole or any part of which bonds are outstanding and unpaid, nor shall said sections apply to any special road district which includes the whole or any part of the territory of any other special road district which has incurred an indebtedness evidenced by an issue of bonds, the whole or any part of

which are outstanding and unpaid."

This section was originally Section 10751, R. S. Missouri 1919, but was amended by the Laws of 1923.

Section 10751, R. S. Missouri 1919, reads as follows:

"The four next preceding sections shall not apply to any township where the whole township or any part thereof is included in a special road district, nor to any special road district including the whole or a part of a township which has heretofore issued bonds for road purposes which remain unpaid."

It was held in *State ex rel. Jackson et al., County Judges, v. Hackmann, State Auditor*, 249 S. W. 71, that a township which was included in the whole or part within a special road district was precluded from issuing any bonds for road purposes pursuant to Sections 10747-10751, whether or not the special road district of which it was a part had heretofore issued bonds that remain unpaid. In arriving at the conclusion in that case the Supreme Court said, l. c. 73:

"It is sufficient for us that the Legislature has clearly provided that townships wholly or partly within a special road district have no power to issue bonds for road purposes. The wisdom of such enactment was for the Legislature and is not for the courts. But a very good reason for such an enactment, outside the undesirable double taxation feature above discussed, is apparent. Special road districts often include several townships or part of townships. Were it not for section 10751, a

single township, within or partly within the district, could readily defeat the will of the great majority of the voters in a special road district to vote bonds for needed road purposes by proceeding for itself to vote a small amount of township road bonds extending in duration the full period fixed by section 10747, and thus tie up the special road district and prevent proper and needed improvement of roads therein for many years.

"It further seems apparent that while the Legislature intended to give townships, no part of which were contained in special road districts, the full right to vote bonds for road purposes, yet, whenever a special road district is organized and has taken in such township or part thereof, it tended to transfer to such special road district the management and control of road matters and the sole power thereafter to issue bonds for such purposes. The township is a political subdivision, organized for various governmental functions, while the special road district is a political subdivision created solely for the purpose of taking care of road maintenance and road construction problems within its boundaries. It is more fitting that all matters of voting bonds for road purposes should be committed to the special road district where it exists, and such, apparently, was the theory of the Legislature in enacting section 10751.

"We are satisfied the Legislature

clearly expressed its meaning in enacting said section 10751, R. S. 1919, just as it is printed, and that it meant to continue to deny to townships, wholly or partly within a special road district, the right to issue road bonds, which right it had so clearly and expressly denied in the act of 1911. Since Franklin township in Howard county is admitted to lie partly within a special road district, it follows that said township had no authority to issue the road bonds in question and that the state auditor was right in refusing to register the same."

In rendering this opinion, they construed the Legislature to mean that any township, lying partly within a special road district, was not empowered to issue road bonds and it made no difference if no bonds had been issued by the special road district. This case was handed down by the Supreme Court of Missouri, in Banc, on March 3, 1923, and the Legislature, in 1923, in view of the opinion of the Supreme Court, amended Section 10751, R. S. Missouri 1919, by what is now Section 7964, R. S. Missouri 1929, supra, which is unambiguous as to the intention of the Legislature. By reading this section, as amended, a township which is wholly or partly in a special road district, which road district has not issued bonds will still come within Sections 7960, 7961, 7962 and 7963 of the Revised Statutes of Missouri 1929. It further specifically allows any special road district, which includes wholly or partly any township, which township has not issued bonds for road purposes, to come within the above four named sections, and it specifically allows a special road district, which is wholly or partly in the territory of another special road district, which other special road district has not issued bonds, to come within the four above named sections.

The reenactment of Section 7964, R. S. Missouri

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1929, clearly shows that the intention of the Legislature was not the intention interpreted by the Supreme Court in the case of State ex rel. Jackson v. Hackmann, supra. If that was not the intention, the Legislature, in 1923, would have omitted the phrase as to each parcel of township or road district having issued bonds that are unpaid.

#### CONCLUSION

In view of the above authorities, it is the opinion of this department that the recently voted township bonds for construction of gravel roads in the township voted upon by the entire township is a valid issue if the special road district in the township has no outstanding bonds unpaid, or if the special road district also includes the whole or any part of the territory of any other special road district which other special road district has no outstanding bonds unpaid.

Respectfully submitted

W. J. BURKE

Assistant Attorney General

APPROVED:

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COVELL R. HEWITT  
(Acting) Attorney General

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