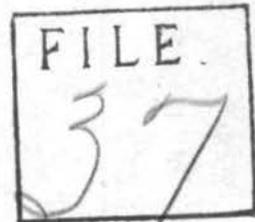


COUNTY COURTS:

County court does not have authority to expend money out of Class 6 for road and bridges in a special road district.

February 13, 1942

Mr. Leo J. Harned  
Prosecuting Attorney  
Pettis County  
Sedalia, Missouri



Dear Sir:

This will acknowledge receipt of your letter requesting an opinion from this office, which reads as follows:

"I am writing you requesting an opinion on the following:

"Where a special road district has insufficient funds to properly maintain the roads in its district, can the County Court set up a fund in Class No. 6 in the profit from general revenue funds to be used under the supervision of the Court in said district where it is most needed for the maintenance of said roads?"

We point out that this opinion applies only to counties not under township organization and to special road districts organized under Article 10, Chapter 46, R. S. Mo. 1939.

In attempting to throw light on the above perplexing problem, we have read more than a score of decisions of our Supreme Court. The only comfort derived from the authorities is found in the quotation of Judge Brown in the case of Road District v. Ross, 270 Mo. 76, and of Judge Lamm in the case of Holloway to use v. Howell County, 240 Mo. 601. Judge Brown, in the Ross case, at l. c. 80, said:

"Our road laws remind us of the famous comment of Peter on the epistles of his Beloved Brother Paul: 'In which are some things hard to be understood.' We have been compelled to approach them frequently during the last few years, and do so with the feeling that we are taking up a bundle of plugs, whittled to suit well enough the local uses that suggested them, but far too small for the apertures into which we are called upon to fit them."

In the Howell County case, Judge Lamm expressed his views at l. c. 609, as follows:

"We pause long enough to remark there is a precept that every man is presumed to know the law. But should not that precept be amended so as to read, every man is presumed to know the law, except the road law? Certain it is that in some of its features it is a tangled skein of incongruities and ambiguities, if not absurdities. Some of its provisions overlap, they do not make a neat joint with cognate sections and the law needs scientific revision. It would be a bold court that did not approach the road laws of Missouri with a questioning eye and a modest degree of doubt."

Since these famous jurists penned the above in 1912 and 1917, respectively, the road laws and kindred statutes have been amended and patched as regularly as the General Assembly has met. We should be pardoned, therefore, from expressing an honest doubt as to our ability to correctly determine the question here presented, or to satisfy the large number of officials who seem to be wrestling with the same vexing problem.

In order to arrive at a correct solution, it is necessary to consider a number of fundamental principles of law which are well known but oftentimes forgotten in the

desire of public officials to follow the dictates of their own judgment rather than the law. It is well to remember that a county court is merely the agent of the county with no powers except those granted by law. As said in the case of Jensen v. Wilson Township, 145 S. W. (2d) 372, 1. c. 374:

"A county court is only the agent of the county with no powers except those granted and limited by law, and like all other agents, it must pursue its authority and act within the scope of its powers. \* \* \* In auditing claims a county court acts merely as the fiscal or administrative agent of the county."

It also should be borne in mind that the construction and repair of highways and roads is purely a matter of statutory regulation subject to constitutional limitations (29 C. J., p. 583, par. 308), and that county courts or commissioners of special road districts, in constructing or improving public roads, act as agents of the state subject to and limited by the state law. In Lamar v. Bolivar Special Road District, 201 S. W. 890, the court at 1. c. 893 said:

"Having held that the county courts, in looking after the public roads within their jurisdiction, are acting as political subdivisions of the state and as agents of the latter, we see no reason for assigning the commissioners of special road districts to a different class, while performing the same general service in behalf of the state."

It is also a fundamental principle of law that the power to tax and the power to provide for the disposition of taxes are identical and inseparable, and accordingly the legislature has full power and control over the disposition of revenues derived from taxation, including the right to name the agency to disburse such revenue, subject, of course, to constitutional restrictions. 61 C. J., p. 1520, par. 2234. In the case of Billings Special Road District v. Christian

County, 5 S. W. (2d) 378, the court quoted with approval from 15 C. J., p. 581, par. 283, as follows:

"The revenues of a county are not the property of the county in the sense in which the revenue of a private person or corporation is regarded. A county being a public corporation existing only for public purposes connected with the administration of a state government, its revenue is subject to the control of the legislature, and when the legislature directs the application of a revenue to a particular purpose, or its payment to any party, a duty is imposed and an obligation created on the county."

In the case of State v. Burton, 182 S. W. 746, the court at l. c. 748-749 said:

"The legislative power to tax being inherent, the creation of agencies or instrumentalities for the levy, collection, and disbursement of such taxes follows as a necessary consequence, and hence the right of the Legislature to enact a law delegating in this case the disbursement of the taxes collected to a board of commissioners of a special road district is not an improper exercise of such power."

From the above it would seem that the question here presented could be determined by merely turning to the statutes, but, as pointed out by Judge Lamm in the Howell County case, these statutes are "a tangled skein of incongruities and ambiguities, if not absurdities. Some of its provisions overlap, they do not make a neat joint with cognate sections." It is plain, however, from a reading of Section 8682 of Article 10, Chapter 46, R. S. Mo. 1939, that the board of commissioners of a special road district organized under said article has the sole and exclusive control and jurisdiction over all public highways within its district, outside the

corporate limits of any city or village. Said section reads as follows:

"Said board shall have sole, exclusive and entire control and jurisdiction over all public highways within its district outside the corporate limits of any city or village therein to construct, improve and repair such highways, and shall remove all obstructions from such highways, and for the discharge of these duties shall have all the power, rights and authority conferred by general statutes upon road overseers, and said board shall at all times keep the public roads under its charge in as good repair as the means at its command will permit, and for this purpose may employ hands at fixed compensations, rent, lease, or buy teams, implements, tools and machinery, all kinds of motor power, and all things needful to carry on such road work: Provided, that the board may have such road work or any part of such work done by contract, under such regulations as the board may prescribe."

Section 8687 of said Article reads:

"Such board may buy all material which may be used, directly or indirectly, in constructing, improving or repairing any public highway or bridge in its district, and is authorized to do and perform all acts within its district for which any authority is given to road overseers under the general road law of this state."

Section 8688 provides:

"Said board may, by contract or otherwise, under such regulations as the board

shall prescribe, build, repair and maintain, or cause to be built, repaired, or maintained all bridges and culverts needed within said district: Provided, however, that the county court of the county in which said special road district is located may, in its discretion, out of the funds available to it for that purpose, construct, maintain, or repair, any bridge, or bridges, or culvert or culverts in such road district, or districts, or it may, in its discretion, appropriate out of the funds available for that purpose money to aid and assist the commissioners of said special road district, or districts, which shall be expended by the commissioners of said special road district, or districts, as above provided."

From the above statutes it is certain that the board of commissioners of a special road district has the exclusive control and jurisdiction over all public highways within its district, and has the authority to employ hands, rent or buy the necessary implements, machinery and material to construct or repair all roads or bridges in its district, and also has the specific authority, by contract or otherwise, to build, repair and maintain all bridges needed within the district. The only authority given a county court is a discretionary one to construct, maintain or repair bridges or culverts in such road districts out of money available for that purpose, or it may appropriate out of funds available for that purpose money to aid and assist the commissioners to build or repair such bridges or culverts.

Under the provisions of Section 8526, R. S. Mo. 1939, the county courts are required to levy upon all property made taxable by law a tax of not more than 20¢ on the one hundred dollars valuation as a road tax, which tax is placed to the credit of the county road and bridge fund.

Under the provisions of Section 8527, R. S. Mo. 1939, the county courts may levy a special tax not exceeding 25¢ on the one hundred dollars valuation to be used for road and bridge purposes and for no other purpose whatever. This sec-

tion specifically provides that that part of said tax which is collected upon any property lying 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.

Under the provisions of Section 8513, R. S. Mo. 1939, taxes derived from the levy authorized by Section 8526, supra, are appropriated to the use of the county court to be used at the discretion of said court for the construction and maintenance of roads and bridges located within the confines of the county highway system as well as all other roads and bridges in such county. But under the provisions of Section 8691, R. S. Mo. 1939, special road districts are entitled to all money collected as county taxes for road or bridge purposes, by virtue of any law, upon property within such special road district. Said section reads as follows:

"In all counties in this state where a special road district, or districts, has or have been organized, or where a special road district, or districts, may be organized under this article, and where money shall be collected as county taxes for road purposes, or for road and bridge purposes, by virtue of any existing law or laws, or subsequent law or laws that may be enacted, upon property within such special district, or districts, or where money shall be collected for pool or billiard table licenses, upon business within such special road district, or districts, the county court shall, as such taxes or licenses are paid and collected, apportion and set aside to the credit of such special road district, or districts, from which said taxes were collected, all such taxes so arising from and collected and paid upon any property lying and being within such special district, or districts, and also one-half of the

amount collected for pool and billiard table licenses, so collected from such business carried on or conducted within the limits of such special road district; and the county court shall, upon written application by said commissioners of such special road district, or districts, draw warrants upon the county treasurer, payable to the commissioners of such special road district, or districts, or the treasury thereof, for all that part or portion of said taxes so collected upon property lying and being within such special road district, or districts, and also for one-half the amount so collected for pool and billiard table licenses, so collected from such business carried on or conducted within the limits of such special road district, or districts."

There can no longer be any doubt that a special road district is entitled, upon timely demand, to all taxes collected for road and bridge purposes upon property within its district, under the provisions of Sections 8526 and 8527, supra. State v. Barry County, 258 S. W. 710; Billings Special Road District v. Christian County, 5 S. W. (2d) 378.

From the above, we think it plain, and have no hesitation in holding, that the construction, improvement and repair of all roads in special road districts is under the exclusive control and jurisdiction of the commissioners of such special road district, and the funds for carrying out such duties are provided by the above statutes. We think it is equally clear that the county courts have no authority to construct, repair or improve roads in special road districts or to expend any money for that purpose. However, the county courts do have the discretionary authority to construct, maintain or repair bridges or culverts in a special road district, or to appropriate money to aid and assist the commissioners of such a district in building or maintaining bridges or culverts out of money available for that purpose.

The question necessarily arises as to what funds a county court has available for such purposes. As pointed out above, a conglomeration of statutes has been passed to govern the construction, maintenance and repair of our road and bridge systems in the various counties, and under the provisions of Section 8526, supra, the county courts have the mandatory duty of levying a road and bridge tax of not to exceed 20¢ on the one hundred dollars valuation, and under the provisions of Section 8527, supra, may levy an additional tax not to exceed 25¢ on the one hundred dollars valuation to be used for road and bridge purposes exclusively.

Having provided a complete scheme for the construction, maintenance and repair of our roads and bridges, and having provided special taxes for the purpose of carrying out such scheme, the question arises as to whether or not any other taxes can be used for the purpose of maintaining our road and bridge system. 15 C. J., p. 581, par. 283, provides:

"The revenues of a county are not the property of the county in the sense in which the revenue of a private person or corporation is regarded. A county being a public corporation existing only for public purposes connected with the administration of a state government, its revenue is subject to the control of the legislature, and when the legislature directs the application of a revenue to a particular purpose, or its payment to any party, a duty is imposed and an obligation created on the county. So too, where the legislature expressly designates a particular mode of raising funds for a certain purpose, all other modes are excluded."

A review of our statutes leads to the conclusion, we think, that since special taxes are provided for road and bridge purposes, other taxes, including the ordinary or general revenue of the county, cannot be used for such purposes. Section 11219, R. S. Mo. 1939, makes it the duty of the

county treasurer to separate and divide the revenues of such county in his hands in compliance with the law, and makes it his duty to pay out the revenues so subdivided, on warrants issued by order of the court, on the respective funds so set apart and subdivided, and not otherwise. Said section also requires him to keep a separate account with the county court of each fund, which funds shall be known and designated as provided by law, and provides that no warrant shall be paid out of any fund other than that upon which it has been drawn by order of the court.

Section 13825, R. S. Mo. 1939, provides as follows:

"When a demand against a county is presented to the county court, the usual form of entry may be exemplified thus:

A B v. \_\_\_\_\_ county. The account of A B for the sum of \_\_\_\_\_ dollars being presented and inquired into, it is found by the court that the sum of \_\_\_\_\_ dollars is due him from the county, payable out of (express the particular fund, as the case may require), and for which the clerk is ordered to issue a warrant.

When the court shall ascertain any sum of money to be due from the county, they shall order their clerk to issue a warrant therefor in the following form:

Treasurer of the county of \_\_\_\_\_, pay to \_\_\_\_\_ dollars out of any money in the treasury appropriated for (express the particular fund, as the case may require). Given at the courthouse, this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_. By order of \_\_\_\_\_ the county court.

Attest: C D, clerk. A B, president."

From the above, it will be seen that the order of the court requires the clerk to issue a warrant out of the particular fund from which the claim is due.

Section 9874, R. S. Mo. 1929, requiring the county court to appropriate, apportion and subdivide the revenue into certain funds has been repealed, but Sections 11219 and 13825, supra, are still in force and effect and should be read and construed with the Budget Act.

It is, therefore, our opinion that the only money available to the county court for the construction, maintenance or repair of bridges in special road districts is that levied for road and bridge purposes, and that the ordinary or general revenue of the county cannot be used for such purposes. We realize that the special tax levied under the provisions of Section 8527 must be returned to the special or other road district from which it is collected, and that the county is only entitled to such money levied upon property not situated in any road district, special or otherwise. We further realize that the money levied under the provisions of Section 8526 must be returned to the special road districts from which it is collected, and the balance, if any, is all that the county court has for road and bridge purposes under this section.

In the case of State v. Barry County, 258 S. W. 710, the county claimed the funds levied and collected under the provisions of what is now Section 8526, and advanced as one of the reasons why it should be entitled to the fund that the legislature had imposed upon the counties certain duties with respect to the upkeep and maintenance of roads and bridges in special road districts, and that the moneys levied under Sections 8526 and 8527 were practically the only sources of revenue for road and bridge purposes, and that it must have been intended that the proceeds of one or the other should be retained by the counties. The court, in answer to this argument, at l. c. 711, said:

"If they plainly provide that the proceeds of both levies, so far as it arises from property in special road districts, be paid to such districts, then it is for the Legislature

to extricate the counties from the dilemma in which it has placed them, if it has done so."

The question of the county paying for the construction, maintenance or repair of bridges or culverts in special road districts, or assisting the commissioners of said special road district in such construction, repair or maintenance, is further complicated by the amendment of the County Budget Law by the 1941 General Assembly. Formerly, Class 3 of the County Budget Law, Section 10911, R. S. Mo. 1939, read as follows:

"Class 3: 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."

The above provision required the county court to apportion the amount required for the upkeep, repair or replacement of bridges on other than state highways and not in any special road district, but the Budget Act does not mention the appropriation or apportioning of moneys for road purposes or for bridges in special road districts. In other words, the road and bridge fund was separate and distinct from the rest of the county revenues and did not come within the County Budget Law. This, no doubt, by reason of the fact that the special and ordinary road districts are entitled to the moneys levied on property in their districts under the provisions of Section 8527, and that special road districts are entitled to the funds levied on property in their districts under the provisions of Section 8526, and that the balance of said road and bridge fund was already appropriated under the provisions of Section 8513, supra, to the county courts for the construction and maintenance of roads and bridges in the county highway system and on all other roads and bridges in the county. Now, however, Class 3 of the County Budget Law, Section 10911, Laws of Missouri, 1941, page 650, reads as follows:

"Class 3. The county court shall next set aside and apportion the amount required, if any, for the upkeep, repair or construction of bridges and roads on other than state highways (and not in any special road district). The funds set aside and apportioned in this class shall be made from the anticipated revenue to be derived from the levies made under Sections 8526 and 8527 R. S. Mo. 1939. This shall constitute the third obligation of the county."

The funds apportioned in Class 3 must now be made from the anticipated revenue to be derived from the levies made under Sections 8526 and 8527, supra, and this money cannot be used for roads and bridges in any special road district. The only purpose we can imagine for this amendment was that the legislature, realizing that special road districts were entitled to all money collected from levies on property within their districts, desired that the balance of such road and bridge funds be expended upon roads not located in such a district. The above provision, however, does not require that all moneys derived from the levies under Sections 8526 and 8527 to which the county is entitled shall be budgeted for the upkeep, repair and construction of bridges and roads other than on state highways and not in any special road district. It merely requires that appropriations for such purpose must be made from revenue derived from levies made under the above sections. In other words, it must have been the legislature's intention that the county court should take care of roads and bridges other than in special road districts before expending any money out of the road and bridge funds for bridges in special districts.

We wish it understood that this opinion does not apply to county highways under the jurisdiction of the county highway commission, nor is this opinion concerned with the transfer or expenditure of surplus funds after the ordinary and general expenses of the current year have been taken care of.

CONCLUSION

In view of all the above, it is the opinion of this department that the county court does not have the authority to construct, repair or maintain roads in special road districts or to expend any money out of Class 6, or any other fund, for such purposes.

It is our further opinion that the county court does not have authority to expend any money out of Class 6, or out of the ordinary or general revenue of the county, for the construction, repair or maintenance of bridges or culverts in special road districts, but that it may expend money for the construction and repair of such bridges out of any balance of the road and bridge funds remaining, if any, after the amount required for the upkeep, repair and construction of bridges and roads on other than state highways and not in any special road district is provided for, as required by Class 3, Section 10911, of the County Budget Law.

Respectfully submitted

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APPROVED:

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ROY MCKITTRICK  
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JET:ER