

TAXATION:
SPECIAL ROAD DISTRICTS:

Commissioners of special road
districts not authorized to levy
a tax

April 22, 1942

X-30



Hon. B. F. Spratt
Presiding Judge
County Court
Platte City, Missouri

Dear Sir:

This is in reply to yours of recent date wherein you request an opinion from this department on the following statement of facts:

"Can a board of Special Road Commissioners legally set a levy in excess of the twenty-five (25¢) cents provided for in Section 8527 for the maintenance of roads and bridges within that district without a vote of the people in such district?"

We are unable to tell from your request, whether or not the special road district to which you refer is one which is organized under Article 11, Chapter 46 R. S. Mo., 1939, relating to special road districts and benefit assessments, or whether it is a special eight mile road district organized under Article 10 of Chapter 46 R. S. Mo., 1939.

If you refer to a special road district benefit assessment organized under article 11, chapter 46 R. S. Mo. 1939, we think your inquiry will be answered by the copy of the opinion herewith enclosed, dated April 7, 1942, directed to Honorable Leon W. Coe, Prosecuting Attorney of Atchison County, Missouri.

If you refer to the special road district under Article 10 of Chapter 46 R. S. Mo., 1939, which applies to the ordinary

eight mile district, we make the following observations and conclusions:

The office of Commissioner of a special road district is created by statute and such commissioner must look to the statute for his authority to act. In our examination of the provisions of said Article 10, Chapter 46 R. S. Mo., 1939, relating to such special road districts, we fail to find where any authority has been granted to commissioners of such districts to set a levy for a tax.

Under Section 8691 R. S. Mo., 1939, all taxes for road purposes including special road and bridge taxes on property within such special road districts are paid to the commissioners of that district upon demand.

Revenue for special road districts, which is derived from a levy of taxes is provided for by Sections 8526, 8527 and Section 23 of Article 10 of the Constitution. The levy for general road and bridge purposes which may not exceed twenty cents (20¢) on the one hundred dollars assessed valuation is authorized by virtue of the provisions of Section 8526 R. S. Mo., 1939, and is included within and classed as taxes for "county purposes". This levy must be within the limits authorized by Section 11 of Article 10 of the Constitution. It will be noted that the county court is the body which makes the levy.

The levy authorized by Section 8527 R. S. Mo., 1939, is designated as "special road and bridge tax". It is in addition to the tax authorized under provisions of said Section 8526 R. S. Mo., 1939, and Section 12 of Article 10 of the Constitution and is authorized by Section 22 of Article 10 of the Constitution. It will be noted that the maximum amount of this tax which may be levied is twenty-five cents (25¢). You will also note that the county court makes this levy.

The only other ad valorem tax authorized to be levied for road and bridge purposes is provided for by Section 23 of Article 10 of the Constitution. This section is as follows:

"In addition to the taxes now authorized

to be levied for county purposes, under and by virtue of section 11 of article 10 of the Constitution of this State, and in addition to the special levy for road and bridge purposes authorized by section 22 of article X of the Constitution of this State, it shall be the duty of the county court of any county in this State, when authorized so to do by a majority of the qualified voters of any road district, general or special, voting thereon at an election held for such purpose to make a levy of not to exceed fifty cents on the one hundred dollars valuation on all property within such district, to be collected in the same manner as state and county taxes are collected, and placed to the credit of the road district authorizing such special levy. It shall be the duty of the county court, on petition of not less than ten qualified voters and taxpayers residing within any such road district, to submit the question of authorizing such special election to be held for that purpose, within twenty days after filing of such petition."

It will also be noted that this section only permits the tax to be levied by the county court, and then only when authorized by a vote of the qualified voters of the district.

In State ex rel. Kersey v. Pemiscott Land & Cooperage Co., 317 Mo. 41, 295 S. W. 78, it was held that the constitutional provision (Article X, Sec. 22) authorizing a special tax for roads and bridges was an express grant of discretionary power to the county courts and was a limitation of the power of the Legislature. The court said, l. c. 80, 295 S.W.:

"It will be noted that this section of the Constitution, in plain and simple

language, provides, in addition to taxes authorized to be levied for county purposes (under Section 11 of Article X of the Const.) the county courts may levy and collect, as state and county taxes are collected, a special tax of not more than twenty-five cents on each one hundred dollar valuation, to be used for roads and bridges, but for no other purposes whatever; and the power thus conferred upon the county courts is declared to be discretionary. This is an express grant of power to the county courts, and is a limitation of the power of the Legislature; a power granted to the county courts to levy and collect a special tax for road and bridge purposes."

So it will be seen here, that the people by this constitutional amendment, have expressly granted to the county court, the power of making a levy in addition to that authorized by Sections 12 and 22 of Article 10 of the Constitution. Even if the Legislature were to attempt to pass an act authorizing the commissioners to make a levy such legislation, according to the Pemiscott case, supra, would be in violation of said Section 23 of Article 10 and would therefore be void.

CONCLUSION

From the foregoing, it is the opinion of this Department, that special road district commissioners may not set a levy in excess of the twenty-five cents (25¢) provided for in Section 8527 R. S. No., 1939, for the maintenance of roads and bridges within that district.

We are futher of the opinion that if a levy is authorized

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by a vote of the people under the provisions of Section 23 of Article 10 of the Constitution, that the county court is the body which should make the levy.

Respectfully submitted

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APPROVED:

ROY McKITTRICK
Attorney General

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