

ROADS AND BRIDGES: Road district levy under Section 8619 and Sec. 23, Art. 10, Mo. Const. cannot be made by county court until authorized by majority vote of road district.

January 13, 1944.



Mr. Thomas G. Woolsey,
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Boonville, Missouri.

Dear Sir:

Your letter of December 27, 1943, presents the following question for our opinion:

May the County Court make the levy provided for in Section 8619 R. S. Mo. 1939, without a majority vote of the qualified voters of the general or special road district?

Under Section 8526, R. S. Mo. 1939, the County Courts in counties of less than 250,000 inhabitants shall at the May term each year levy upon all real and personal property a tax of not more than twenty cents on the one hundred dollars valuation as a road tax, which is to be placed to the credit of the "county road and bridge fund."

Under Section 8527, R. S. Mo. 1939, in addition to the levy provided in Section 8526, the County Court may levy a special tax not exceeding twenty-five cents on the one hundred dollars valuation, to be placed to the credit of the "special road and bridge fund." The tax collected on property lying in a road district belongs to said road district and is paid out to the proper officer of the district. The tax collected from property not lying in a road district is placed to the credit of "county road and bridge fund" provided for in Section 8526.

It seems that the districts you have in mind have in existence these two levies totaling forty-five cents, but that the commissioners of the districts in question have been arbitrarily naming a levy in excess of this forty-five cents, and the County Court has been levying each year the amount arbitrarily named under Section 8619, R. S. Mo. 1939. The levy which the court is authorized to make under Section 8619 can only be made if, prior thereto, it has been authorized as provided in Sections 8617 and 8618, R. S. Mo. 1939.

Section 8617 provides:

"Whenever ten or more qualified voters and taxpayers residing in any general or special road district in any county in this state shall petition the county court of the county in which such district is located, asking that such court call an election in such district for the purpose of voting for or against the levy of the tax provided for in section 23, article 10 of the Constitution of Missouri, adopted November 2, 1920, it shall be the duty of such court, upon the filing of such petition, to call such election forthwith to be held within 20 days from the date of filing of such petition. Such call shall be made by an order entered of record setting forth the date and place of holding such election, the manner of voting and the rate of tax the court will levy, which rate shall not exceed fifty cents on the hundred dollars assessed valuation on all property in the district. A copy of such order shall be published in two successive issues of any newspaper published in such district, if any, and if no newspaper is published in such district, three certified copies of such order shall be posted in public places in such district. The first publication in said newspaper and the posting of such notice shall be not less than ten days before the date of such election. Such court shall also select one or more judges and clerks for such election to receive the ballots and record the names of the voters."

Section 8618 provides:

"Those voting in favor of the additional tax shall have written or printed on their ballots, 'For the tax;' those voting against the tax the words, 'Against the tax.' The judge or judges shall receive the ballots and the clerks shall record the names and numbers of the voters and the judge shall place the corres-

ponding number on the ballots. The judges and clerks shall remain at such voting place from eight o'clock in the forenoon until five o'clock in the afternoon and receive and record all the ballots offered by qualified voters of the district and shall, within 24 hours after the close of such election, transmit the ballots and list of voters to the county clerk. The county clerk shall, in the presence of one or more of the judges of the county court, open and count the ballots."

Section 23, Article 10, Mo. Const., being the provision referred to in Section 8617, 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."

There can be no doubt upon reading Section 8617 and Section 23, Article 10, together, that the tax authorized cannot be levied until an election properly called and held has authorized such levy by a "majority of the qualified voters" of the road district. Not only is that fact evident from the provisions already noted, but it also appears from Section 8619 R. S. Mo. 1939, which is as follows:

"If a majority of the qualified voters voting at such election shall have voted for such additional tax, it shall be the duty of the county court to make the levy for such district, which levy shall not exceed the amount named in the order calling such election, and in no event shall exceed fifty cents on the hundred dollars of such valuation. Such levy shall be in addition to the tax which the county court is authorized to levy without a vote of the district. The tax so authorized by such district shall be collected in the same manner and at the same time as state and county taxes are collected and placed to the credit of the road district authorizing such special levy."
(Underscoring ours.)

From the foregoing it appears that the county court makes the levies under Sections 8526 and 8527 on its own motion, and does not need to have an election authorizing such action. It also appears that the tax levy authorized under Section 8619 cannot be made until authorized by a majority vote of the voters of the road district. It is that election which gives the court its authority to act. The commissioners of the district have nothing to do either with the election or the levy, and the county court cannot levy more than the amount authorized by such election.

CONCLUSION.

It therefore is our opinion that a county court may not levy a tax under Section 8619 and Section 23,

Mr. Thomas G. Woolsey,

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Article 10, Missouri Constitution, upon property in road districts, until such action has been properly authorized by a majority of the qualified voters of said district at an election held for that purpose.

Respectfully submitted,

LAWRENCE L. BRADLEY
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APPROVED:

VANE C. THURLO
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