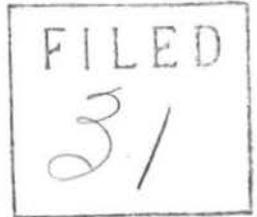


TAXATION: Incorporated city within special road district under township organization not entitled to funds of the district.



November 2, 1945

Honorable Edwin Frieze  
Prosecuting Attorney  
Dade County  
Greenfield, Missouri

Dear Sir:

This office is in receipt of your request for an opinion under date of October 18, 1945, in which the following question is presented:

The City of Everton is an incorporated town and lies within the Everton Special Road District created in 1925. Until 1932 the Township Collector remitted to the City Treasurer of Everton a share of the road taxes collected. Since that time said road tax has been turned over to the Treasurer of the Everton Special Road District. Back taxes received are remitted to the City of Everton by the County Collector. Is the City of Everton entitled to its own road taxes from current collections? Township organization prevails in Dade County.

It is assumed that the Everton Special Road District was created under Article 16, Chapter 46, R. S. Mo. 1939, which applies in counties having township organization. Such road districts were authorized by Sections 22 and 23 of Article X of the Constitution of 1875, to levy additional taxes for road and bridge purposes. In pursuance to these provisions, the Legislature enacted Section 8841, R. S. Mo. 1939, which was amended in Laws of 1941, page 528. That section is, in part, as follows:

"The commissioners shall levy on the property taxable in every such incorporated district such taxes \* \* \*, and such taxes when so collected shall be paid by the township collector to the treasurer of the special road district \* \* \*. County courts shall cause to be set aside and placed to the credit of each road district so incorporated such portion of two-thirds of all revenue \* \* \*. All revenue so set aside and placed to the credit of any such incorporated district shall be used by the commissioners thereof for constructing, repairing and maintaining bridges and culverts within the district, and working, repairing, maintaining and dragging public roads within the district, and paying legitimate administrative expenses \* \* \*."

We are unable to find any statute in the laws applying to special road districts under township organization which authorize the transfer of any funds whatever to any incorporated city or town within such special road district. There is a provision which permits the expenditure of one-fourth of the revenue received by special road districts in counties not under township organization on the roads or streets within the corporate limits of any city within such special road district, and you refer to that section in your request. That statute is Section 8683, R.S. Mo. 1939, but by the provisions of Section 8673, R. S. Mo. 1939, it does not apply to Lade County or any other county having township organization.

We are unable to find a case involving an incorporated city and a special road district under township organization, but Lamar Township v. City of Lamar, 261 Mo. 171, was a case in which the township collector paid part of the road taxes collected in the City of Lamar, in Lamar Township, over to the treasurer of said city. In that case Lamar Township, in Barton County, sought to recover certain road and bridge funds levied and collected in Lamar Township for the years 1909, 1910 and 1911 and paid by the township collector to the City of Lamar. We find the following in the court's opinion, l. c. 180:

"Do these taxes levied and collected by Lamar township, from the citizens living within the

corporate limits of the city, belong to the plaintiff township or defendant city? That it would seem fair for the city of Lamar to have them, all must admit. It is so recognized by our Legislature, as shown by their repeated efforts to pass and in passing such law. To whom public funds belong and the disposition that can lawfully be made of them, depends upon the law and not upon sentiment or anyone's idea of fairness. So it becomes the court's duty to be governed by the law and not by personal preference of the individual who discharges the judicial function.

"In the year 1908 the people adopted an amendment to the Constitution designated as section 22, article 10. \* \* \* \*

"It is clear under this section of the Constitution (Sec. 22) that of the road and bridge tax therein authorized to be levied and collected by Lamar township, no division could be made with the city of Lamar. It is required to be used for the roads and bridges within the township, and not upon the streets of the city. In the face of this constitutional prohibition no law could be passed by the Legislature taking away from the township one cent of the public funds authorized to be levied under it. \* \* \* \*"

The court then proceeded to a discussion of Section 46 of Article IV of the Constitution of 1875, which is as follows:

"The General Assembly shall have no power to make any grant, or to authorize the making of any grant of public money or thing of value to any individual, association of individuals, municipal or other corporation whatsoever: Provided, That this shall not be so construed as to prevent the grant of aid in a case of public calamity."

The court then concluded, l. c. 183:

" \* \* \* Section 46 of the Constitution construed in the Kirkwood case, 142 Mo., supra, is reasonably clear and the construction placed upon section 46 in that case is logical and this court is of the opinion that the Legislature has no power to pass a statute authorizing the township to pay the part of the road taxes collected in the cities and towns into the treasury of such cities and towns. The court is satisfied, under the law, the road taxes collected by the township collector and paid into the city treasury belong to the township."

While the above case has not been reversed, it has been modified in State ex rel. Clay County v. Hackman, 270 Mo. 658, to permit the use of funds collected by a county on the streets and roads of municipal corporations when so expended by the county itself. The pertinent part of the latter decision is as follows, 1. c. 675:

"In so far, therefore, as the case of State ex rel. St. Louis County v. Gordon held that a county fund could not be granted to a municipality, we think the holding is correct; but in so far as it may be said to express the thought that a portion of the proceeds of bond issues as here involved cannot be used for improving portions of city streets which form connecting links in a county system of roads, we are of the opinion, for the reasons stated in paragraph II above, that such view is an erroneous one and should not be followed."

Under the authority of this case, a special road district under township organization, even in the absence of a permissive statute, might improve portions of city streets or roads which form an integral part of the special road district's system of roads and highways. Such use of funds would lie entirely within the discretion of the commissioners of the special road district and would be subject to the right of any incorporated city to control its own streets.

CONCLUSION

It is our conclusion that a special road district under township organization may not turn over any part of the funds allotted to it by other authority or collected by it to any municipal corporation within such district, but that such special road district may, in its discretion, maintain or improve streets within a city in the district which form an integral part of the roads and highways of the district, with the consent of the municipal corporation concerned.

Respectfully submitted,

ROBERT L. HYDER  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General

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