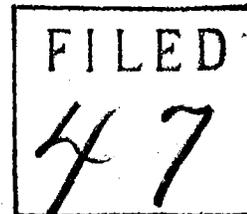


SPECIAL ROAD DISTRICTS: Right to receive funds arising from taxes levied on property within the boundaries of special road districts organized under the provisions of Art. 11, Chap. 46, R. S. Mo. 1939, in the year of incorporation and organization.

March 20, 1945



Honorable O. A. Kamp
Prosecuting Attorney
Montgomery City, Missouri

Dear Sir:

Reference is made to your letter under date of March 5, 1945, requesting an official opinion of this office, and reading as follows:

"I am writing you for an opinion on the following question, which has come up with our County Court, and we would like a ruling from your department.

"A Special Road District was organized in this County by the order of the County Court, on December 4th, 1944, known and designated as the Rhineland Best Bottom Special Road District, under and in accordance with the provisions of Article 11, Sections 8710 and 8711, R. S. Missouri 1939. Three Commissioners were appointed by the Court who served until replaced at the election held on the first Tuesday after the first Monday of January 1945, in accordance with section 8712.

"The County Court had made the regular levy for the raising of revenue for road and bridge purposes at the May Term of said Court, 1944, in accordance with Sections 8527 and 8821, R. S. 1939.

"The territory from which this new Special Road District was organized, had been included in what is known as Montgomery County Road

District No. 1, which includes all of Montgomery County, which is not within the boundaries of Special Road Districts. The County had maintained and repaired the roads of said Montgomery County District No. 1, out of the revenue raised and anticipated for the year 1944, and the records show that money had been expended by the County out of said funds for the repair and maintenance of the roads and bridges in the territory now comprised by the new Special Road District, equal (OR MORE) to the amount of revenue raised on the valuation of said district as organized.

"The Commissioners of said district now are asking that the County Court set over and deliver to the district as now organized and to the Treasurer for their benefit, an amount of money equal to the revenue raised on the valuation of their district. The Court feels that since the district was not organized when the levy was made, last May, 1944, and due to the fact that they have expended on the roads and bridges in said district funds raised by said levy, that they cannot now set over to said district the funds they are asking for. They feel that this cannot be done under the law, and furthermore that the district has already had the benefit of said funds raised by said levy, through the expenditures made by the County Court during the year 1944, and that they will have to receive their funds from the levy to be made at the May Term, 1945, by the Court and such levy as the district Commissioners might levy under sections 8716."

We have carefully examined the statutes relating to the incorporation of special road districts of the type to which you refer, and we fail to find any direct answer to your question. However, it is a primary rule of statutory construction that the intent of the Legislature in enacting a law be ascertained and effect given thereto if possible.

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As bearing upon the question of legislative intent in the matter at hand, we think portions of certain other statutes enacted at the same time as the one providing for the incorporation of such road districts as that to which you refer are pertinent. We quote, in part, from Section 8711, R. S. Mo. 1939, as amended, Laws of 1941, page 529:

" * * * Whenever an order is so made incorporating a public road district such district shall thereupon become, by the name mentioned in such order, a political subdivision of the state for governmental purposes with all the powers mentioned in this section and such others as may be conferred by law."

Also, from Section 8712, R. S. Mo. 1939:

"At the term of court in which such order is made, * * * the court shall appoint three commissioners, * * * who shall hold their office until the first Tuesday after the first Monday in January thereafter; * * *."

And from Section 8714, R. S. Mo. 1939:

" * * * Said commissioners * * * shall at all times keep such roads, bridges and culverts in as good condition as the means at their command will permit, and for such purpose may employ hands and teams at such compensation as they shall agree upon; rent, lease or buy teams, implements, tools and machinery; all kinds of motor power, and all things needed to carry on such work: * * * "

In our opinion, the quoted provisions clearly indicate an intent on the part of the Legislature that such newly organized special road districts forthwith enter upon the discharge of the

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duties enjoined upon them. As corollary to that proposition, we are of the further opinion that inasmuch as such duties are to be promptly discharged, the special road districts are necessarily to be empowered to do so by receiving, among other things, tax money to work with.

Applied to your particular case, it seems that the new special road district is entitled to receive such portion of the tax money arising from the 1944 levy on property within the boundaries of the new special road district that remains unexpended in the county treasury.

We have further noted your statement that more money has been expended on the roads and bridges located within the boundaries of the new special road district than was yielded by the levy on property located therein. If this fact be so established by the records, we feel that the commissioners of the new special road district are not entitled to receive any additional tax moneys.

CONCLUSION

In the premises, we are of the opinion that upon the incorporation of a special road district, under the provisions of Article 11, Chapter 46, R. S. Mo. 1939, such new district is entitled, upon organization, to receive all unexpended funds in the hands of the county treasurer arising from tax levies made upon property located within such new district; and that if prior to the organization of such new special road district the county court has in fact expended on the roads and bridges located therein more money than has been yielded by the levy on property located within such new special road district, that the commissioners thereof are not entitled to receive any additional funds from the county treasury in the year of organization.

Respectfully submitted

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APPROVED:

J. E. TAYLOR
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