ROADS AND BRIDGES: TAXATION: ELECTION: Taxes levied for road and bridges purposes, authorized by first sentence of Section 12 (a), Article X of the Constitution are distributed four-fifths to the special road district from which the tax arose, and one-fifth to the county. Taxes levied under the second sentence of said section are all placed to the credit of the road district authorizing the levy. Elections authorizing the levy of not more than 35¢ additional road tax may be held on the day of a general or special election, provided the election is held within 20 days from the filing of the petition for the election.

February 4, 1947

Honorable Herbert S. Brown
Prosecuting Attorney
Grundy County
Trenton, Missouri

Dear Sir:

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

> "Article X, Section 12 (a) of the Constitution of the State of Missouri, 1945, provides as follows:
>
> "'Sec. 12 (a) Additional Tax Rates for County Roads and Bridges - Road Districts. "In addition to the rates authorized in section 11 for county purposes, the county court in the several counties not under township organization, the township board of directors in the counties under township organization, and the proper administrative body in counties adopting an alternative form of government, may levy an additional tax, not exceeding thirty-five cents on each hundred dollars assessed valuation, all of such tax to be collected and turned in to the county treasury to be used for road and bridge purposes. In addition to the above levy for road and bridge purposes, it shall be the duty of the county court, when so authorized by a majority of the qualified electors of any road district, general or special, voting thereon at an election held for such purpose, to make an additional levy of not to exceed thirty-five cents on the hundred dollars assessed valuation on all taxable real and tangible personal property within such district, to be collected in the same manner as state and county taxes,

and placed to the credit of the road district authorizing such levy, such election to be called and held in the manner provided by law.'"

"You will note that the second sentence of Section 12 (a) uses the following language:

"'In addition to the above levy for road and bridge purposes, it shall be the duty of the county court, when so authorized by a majority of the qualified electors of any road district, general or special, voting thereon at an election held for such purpose, to make an additional levy of not to exceed thirty-five cents on the hundred dollars assessed valuation on all taxable real and tangible personal property within such district, to be collected in the same manner as state and county taxes, and placed to the credit of the road district authorizing such levy, such election to be called and held in the manner provided by law.'

"Does this second sentence of Article X, Section 12 (a) of the Constitution of the State of Missouri, 1945, mean that every township in counties under township organization can levy a thirty-five cent tax, on a majority vote of the electors in said township, in addition to the other thirty-five cent levy authorized by the first sentence of Article X, Section 12 (a) of the Constitution of the State of Missouri, 1945? In other words, is a township board, on a vote of the majority of the electors of the township, authorized to levy and collect a total tax of seventy cents on the hundred dollars assessed valuation of all taxable property within the township?

"In connection with the above, your attention is called to Section 8527 and Section 8529 of House Bill No. 784, of the 63rd General Assembly and Section 8820 and Section 8830 of House Bill No. 798 of the 63rd General Assembly of the State of Missouri.

You will note that Section 8820 of House Bill 798 provides that the County Court of any county which has township organization may, in its discretion, order the County Treasurer to retain an amount not to exceed five cents on the one hundred dollars assessed valuation out of such special Road and Bridge Fund so created and to transfer the same to the County Road and Bridge Fund.

"The further question is submitted: Is the five cents on the one hundred dollars valuation, which the County Court may, in its discretion, order the County Treasurer to retain on behalf of the County Road and Bridge Fund, taken out of the thirty-five cent levy which the township board may levy by virtue of the first sentence of Section 12 (a) of Article X of the State Constitution, and does the County Court also have the right, in its discretion, to take an additional five cents out of the additional thirty-five cent levy as authorized by the second sentence of Section 12 (a) of Article X of the State Constitution?

"The further question is submitted: If it is your opinion that the township boards may levy an additional thirty-five cents, by virtue of the second sentence of Section 12 (a) of Article X of the State Constitution, on a vote of the majority of the people of the township, in addition to the thirty-five cent rate authorized by the first sentence of Article X, Section 12 (a), can such levy be voted on by the electors of such township at a regular township election?"

Your request, in substance, brings up three questions, namely: (1) Does the township board in counties under township organization, when authorized by a vote of the electors therein, have authority to levy and collect a total tax of seventy cents on the one hundred dollars assessed valuation of all taxable property in the township? (2) May the county court withhold from the road and bridge taxes, raised under

authority of Section 12 (a) of Article X of the Constitution, five cents on the one hundred dollars assessed valuation of all taxes raised for road and bridge purposes in the township or county which includes the taxes raised by the levy of not to exceed thirty-five cents by the county court or administrative body under township organization and the additional levy of not to exceed thirty-five cents authorized by the electors of a road district, general or special, in such counties or townships? (3) May the election authorizing the levy of the additional road and bridge tax be held at a time when the regular township elections are held?

Referring to the first question, we find that the Constitution and statutes seem to indicate that a tax of a total of seventy cents might be levied for road and bridge purposes in road districts, general or special. Referring to said Section 12 (a) of Article X of the Constitution, it will be seen that county courts in counties under township organization and the township board of directors under township organization, and the proper administrative body in counties adopting an alternative form of government, may make a levy for an additional tax not exceeding thirty-five cents on the one hundred dollars assessed valuation, and this tax is turned into the county treasury for road and bridge purposes. Then under the second sentence of said Section 12 (a), authority is granted to impose an additional levy for road and bridge purposes when such levy is authorized by a majority of the qualified voters of any road district, general or special. This tax, authorized by the election under the second sentence of said Section 12 (a), is placed to the credit of the road district authorizing such levy.

Referring to H.C.S.H.B. No. 798 of the 63rd General Assembly, which was approved on July 3, 1946, and especially Section 8820 thereof, it will be found that the Legislature set up the machinery for the carrying out of the provisions of the first sentence of said Section 12 (a) of Article X of the Constitution. This section, relating to counties under township organization, reads as follows:

> "In addition to other levies authorized by law, the township board of directors of any township in their discretion may levy an additional tax not exceeding thirty-five cents on each one hundred dollars assessed valuation in their township for road and bridge purposes. Such tax shall be levied by the township board, to be collected by the township collector and turned into the county treasury, where

> it shall be known and designated as a special road and bridge fund. The county court of any such county may in its discretion order the county treasurer to retain an amount not to exceed five cents on the one hundred dollars assessed valuation out of such special road and bridge fund and to transfer the same to the county special road and bridge fund; and all of said taxes over the amount so ordered to be retained by the county shall be paid to the treasurers of the respective townships from which it came as soon as practicable after receipt of such funds, and shall be designated as a special road and bridge fund of such township and used by said townships only for road and bridge purposes: Provided, that the amount retained, if any, by the county shall be uniform as to all such townships levying and paying such tax into the county treasury: Provided, further, that the proceeds of such fund may be used in the discretion of the township board of directors in the construction and maintenance of roads and in improving and repairing any street in any incorporated city, town or village in the township, if said street shall form a part of a continuous highway of the township running through said city, town or village."

This section confers on the township board of directors in counties under township or anization authority to levy a tax of not to exceed thirty-five cents on each one hundred dollars assessed valuation in their township for road and bridge purposes. The authority granted to township boards to make this levy is similar to the authority granted to county courts not under township organization under the provisions of Section 8527 of H. C. S. H. B. No. 784. The second sentence of said Section 12 (a) of Article X of the Constitution which authorizes the levy in addition to the first thirty-five cents levy for road purposes seems to authorize the county court only to make that levy, and the county court can only make the levy when authorized by a majority of the qualified electors of a road district.

Section 8529 of H. C. S. H. B. No. 784, passed by the 63rd General Assembly, makes provisions for the levying of a tax for road and bridge purposes. This tax may not be in excess of the thirty-five cents on the one hundred dollars assessed valuation, and it is in addition to the levy authorized by the first sentence of said Section 12 (a). This section reads as follows:

> "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 the second sentence of the first paragraph of Section 12 of Article X of the Constitution of Missouri, it shall be the duty of the county court, upon the filing of such petition, to call such election forthwith to be held within 20 days from the date of filing 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 thirty-five cents on the hundred dollars assessed valuation on all taxable real and tangible personal 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."

Said Section 12 (a) of Article X of the Constitution and the statutes hereinbefore referred to clearly disclose that the township boards in counties under township organization do not have authority to levy the additional tax of not to

exceed thirty-five cents for road and bridge purposes authorized by the second sentence of said constitutional provision. However, it might be noted that in the event such township comprised a general or special road district, such additional levy might be voted in accordance with the statutory mode prescribed for holding such election. In that event, the additional levy would necessarily be made by the county court in accordance with the terms of the constitutional provision referred to.

Then, referring to Section 8531 of said H. C. S. H. B. No. 784, it will be seen that the lawmakers have placed a construction on the second sentence of said Section 12 (a) of Article X of the Constitution to the effect that taxes raised under the levy authorized by a vote of the electors of the district are to be placed to the credit of the district authorizing such special levy. It would therefore appear from the provisions of these sections and from the provisions of the second sentence of said Section 12 (a) of Article X of the Constitution that the county court would not have the right in its discretion to take an additional five cents out of the additional thirty-five cents levy which is authorized by the second sentence of said Section 12 (a) and by said Section 8529 of said H. C. S. H. B. No. 784.

On the question of whether or not the election to determine whether or not the additional levy may be authorized may be held on the day when regular township elections are held, we do not find any provision in the Constitution or in the law which would prohibit the election from being held on that date. The only directions that the act seems to provide pertaining to the time of holding the election are found in said Section 8529 of said H. C. S. H. B.No. 784. This section provides that when ten or more qualified voters and taxpayers, residing in any general or special road district, petition the county court in the county in which such district is located, asking for an election on the question of whether or not the additional tax shall be imposed, then it is the duty of the county court to call the election on this question within 20 days from the date of the filing of such petition. The rule seems to be that in the absence of any statutory provision, the body calling an election may exercise its discretion as to the date when such election may be held. This rule was announced in a Kentucky case, Furste v. Gray, 42 S.W. (2d) 889, 240 Ky. 604:

> "Time for holding special election may, by writ of election, be fixed for same day as general election, that being in discretion of officer issuing writ."

From a review of the cases, we think our lawmakers have observed this rule and made special provisions for holding certain elections which the lawmakers thought should not be held on general election days. We refer to the local option laws. In the case of State ex rel. v. Ruark, 34 Mo. App. 325, the court, in discussing the reason for the provisions of the law prohibiting local option elections to be held within a certain time before or after the holding of a general election, made this statement at l.c. 329:

> " * * * The evident intention of the law making power of the state was to free the elections on the whiskey question, from all partisan and local influences, and that such elections should be uninfluenced by the excitement aroused by other recent elections, or by contemplated elections.* * "

Apparently the members of the 63rd General Assembly saw no reason to provide that the election to authorize the special levy for road and bridge purposes could not be held on a general election date. In the absence of such legislation, it would seem that the county court could designate a general election date for the date for holding such election provided it is within 20 days after the petition for such election is filed.

CONCLUSION

From the foregoing, it is the opinion of this department that:

(1) Township boards of directors in counties under township organization are authorized to levy and collect a tax of thirty-five cents on the one hundred dollars valuation for road and bridge purposes, under the provisions of Section 12 of Article X of the Constitution of 1945. In the event such township comprises a general or special road district and it is desired to levy the additional thirty-five cents, or some portion thereof, under the provisions of Section 12 of Article X of the Constitution of 1945, an election upon that proposition must be held. In the event that such proposition receives a majority of the votes, such additional levy must be made by the county court.

(2) The county court does not have authority to take any part of the levy of the additional tax authorized by the second sentence of said Section 12 (a) of Article X of the

Constitution, but all of the taxes authorized by that levy must be placed to the credit of the road district voting and authorizing such special levy.

(3) The county court may call the election to authorize the collection of the additional road tax and provide that said election may be held on the same date that the regular township elections are held, provided such election is held within 20 days of the filing of the petition.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

TWB:VLM