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Copy to J. Smith

TAXATION: Taxes levied under Sec. 11(c), Art. X, Consti.'45, and  
COUNTY: Sec. 8606, page 1478, Laws '45, to retire bonds voted  
BONDS: must be levied against all taxable property  
SPECIAL ROAD DISTRICTS: in the county. It is the duty of collector  
to collect all taxes levied on property except  
as otherwise provided in Sec. 11084, R.S. Mo. '39.  
Special road districts not entitled to receive  
foregoing taxes on property located in said  
districts  
March 12, 1948

FILED  
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Mr. J. B. Murphy  
Collector of Maries County  
Vienna, Missouri

Dear Sir:

This will acknowledge receipt of your request for an  
opinion which reads:

"Last Spring the voters of Maries County  
authorized a bond of \$50,000.00 for road  
purposes.

"I have two questions on which I would like  
to have your opinion at once. (1) Are  
people who live in Special Road Districts  
compelled to pay this tax? (some have  
refused to do so)

"(2) Am I justified in receiving the rest  
of the taxes and issuing a receipt for  
same when the taxpayer refuses to pay the  
tax levied for paying off the bonded in-  
debtedness? (Would I be compelled to do  
so?)

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"P.S.--Are Special Roads Districts entitled  
to any of the money voted for road building  
from the \$50,000.00?"

The bond issue approved by the voters of Maries County  
referred to in your request was apparently authorized under  
and by virtue of Section 11(c) of Article X, Constitution of  
Missouri, 1945, and Section 8606, page 1478, Laws of Missouri,  
1945, which read:

"Sec. 11(c). In all municipalities,  
counties and school districts the rates  
of taxation as herein limited may be  
increased for their respective purposes  
for not to exceed four years, when the

rate and purpose of the increase are submitted to a vote and two-thirds of the qualified electors voting thereon shall vote therefor; provided that the rates herein fixed, and the amounts by which they may be increased, may be further limited by law; and provided further, that any county or other political subdivision, when authorized by law and within the limits fixed by law, may levy a rate of taxation on all property subject to its taxing powers in excess of the rates herein limited, for library, hospital, public health, recreation grounds and museum purposes."

"Section 8606. The county courts of the counties of this state are hereby authorized to issue bonds for and on behalf of their respective counties for the construction, reconstruction, improvement, maintenance and repair of any and all public roads, highways, bridges and culverts within such county, including the payment of any cost, judgment and expense for property, or rights in property, acquired by purchase or eminent domain, as may be provided by law, in such amount and such manner as may be provided by the general law authorizing the issuance of bonds by counties. The proceeds of all bonds issued under the provisions of this section shall be paid into the county treasury where they shall be kept as a separate fund to be known as the 'Road Bond Construction Fund' and such proceeds shall be used only for the purpose mentioned herein. Such funds may be used in the construction, reconstruction, improvement, maintenance and repair of any street, avenue, road or alley in any incorporated city, town or village if such street, avenue, road or alley or any part thereof shall form a part of a continuous road, highway, bridge or culvert of said county leading into or through such city, town or village."

You first inquire if the people, who live in the special road districts located in your county, are compelled to pay

the additional tax required to pay off this bonded indebtedness. Section 8606, supra, when enacted by the 63rd General Assembly, specifically repealed Sections 8606, 8607 and 8608, R. S. Mo. 1939. Section 8608, R. S. Mo. 1939, prior to its repeal, did specifically require such taxes to be assessed and levied against all of the property in the county. In repealing Section 8608, supra, the Legislature only enacted Section 8606, Laws of Missouri, 1945, supra, in lieu thereof, and that provision does not designate the particular property to be taxed for the retirement of this bonded indebtedness.

However, we do not consider this important for the reason that the bonded indebtedness was authorized by the vote of all of the people in the county, and furthermore, it was requested for the purpose of maintenance, constructing, reconstructing, improvement and repair of any and all public roads, highways, bridges and culverts in the county, which clearly indicates that all persons are benefitted by said bond issue and that no property otherwise taxable should be exempted from this taxation.

In support of this conclusion, reference can be made to other statutes authorizing the county courts to tax property wherein said statutes do not specifically include or exclude special road districts and other political subdivisions. However, in some of the acts, it requires a certain percentage of such taxes collected on property lying within any special road district to be placed to the credit of said special road district, which shall ultimately be paid to said special road district. (See Section 8527, page 1479, Laws of Missouri, 1945; Section 8691, page 1495, Laws of Missouri, 1945.)

In view of the foregoing, we are of the opinion that all taxable property in the county is subject to this levy for the retirement of this bonded indebtedness.

You next inquire if you are justified in receiving payment of all taxes due on property in your county, except such taxes levied to pay off this bonded indebtedness, and issue a receipt for the taxes tendered. Section 11084, R. S. Mo. 1939, requires the collector to accept tax payments and give his receipt for same, and reads:

"Whenever any person shall pay taxes charged on the tax book, the collector shall enter such payment in his list, and give the person paying the same a receipt, specifying the name of the person for whom paid, the amount paid, what year paid for, and the property and value thereof on which the same was paid,

according to its description on the collector's list, in whole or in part, as the case may be, and the collector shall enter 'paid' against each tract or lot of land when he collects the tax thereon. The collector shall receive taxes on part of any lot, piece or parcel of land charged with taxes: Provided, the persons paying such tax shall furnish a particular specification of the part, and if the tax on the remainder of such lot and parcel of land shall remain unpaid, the collector shall enter such specification in his return, to the end that the part on which the tax remains unpaid may be clearly known. If payment is made on an undivided share of real estate, the collector shall enter on his record the name of the owner of such share, so as to designate upon whose undivided share the tax has been paid."

The foregoing provision is practically the same as was Section 11459, R. S. Mo. 1909, and the Supreme Court, in *State ex rel. Stone, Internal Revenue Collector, vs. Kansas City, Ft. S. & M. Ry. Co. et al.*, 178 S.W. 444, construed that provision. In that case, the defendants paid all the taxes for 1912, except \$23.56, and also tendered all of the 1913 taxes with the exception of \$28.96, which tender was refused. The defendants contended that the foregoing amount they refused to pay represented that portion of the school taxes which they claimed was illegal. The court held that under the foregoing section that it contemplates payment of all taxes of the whole tract and in so holding, said:

"The defendants in apparent good faith contended at the trial of the cause that such disputed portion of the taxes was void by reason of the provisions of section 11 of article 10 of our state Constitution. That contention was decided in favor of the validity of the taxes in an opinion by Paris, J., in *State ex rel. v. St. Louis & S. F. R. Co.*, 174 S. W. 64, decided since this appeal was taken. Appellants do not now insist on reopening that question, but protest that they should not be adjudged to pay the penalty of 1 per cent. a month. They contend that, if they are to be adjudged to pay such penalty, it

should be estimated only on the amount the legality of which was disputed, and not on the amount which was tendered and not accepted. They say that section 11459, Rev. Stat. 1909, requires the collector to receive and receipt for the taxes which may be tendered on any part of a tract of land. That section does not apply to any taxes, except taxes on land. It contemplates the payment of all taxes on a specified part or on an undivided part of the whole tract; but it does not contemplate the payment of a part of the taxes on the whole property. That section has no application to the facts in this case. We know of no law requiring the collector to accept a part of the taxes under the circumstances of this case. The collector's refusal to accept the amount tendered did not result in relieving defendant of the payment of the penalty on the amount tendered."

Also in *Walden vs. Dudley*, 49 Mo. 419, l.c. 420, the court, in holding the collector shall collect all taxes on the assessor's list, the only exception being property expressly exempt by law, said:

"We cannot pass upon the question in this form of action. The collector is an executive officer. In general it is his duty to collect all the taxes contained in the assessor's list. He has no discretion in the matter, and is liable for the non-performance of his duty. The exception is that where property is expressly exempt from taxation by law, then the assessor has no jurisdiction, the assessment is simply void; he has no right to collect it. \* \* \* \* \*"

Therefore, we must conclude that as collector, you should not accept the payment of taxes on any one piece of property without also accepting the payment levied against said property for the retirement of the foregoing bonded indebtedness.

Last you inquire if the special road districts within the county are entitled to any of the money received from such levying of taxes on property in said special road districts and sale of bonds. For a long time, it has been the law, and

still is under some statutes, that special road districts are entitled to receive taxes collected upon all property within said special road districts.

Section 8527, page 1479, Laws of Missouri, 1945, provides that the county court, in its discretion, may levy additional taxes not to exceed thirty-five cents on the hundred dollars assessed valuation of property, and when collected shall be turned into the county treasury to be known as "The Special Road and Bridge Fund" and, further, allocates a certain percentage of all such taxes collected on property in the special road districts to said special road districts. However, the foregoing levy is unquestionably authorized under Section 12(a), Article X, Constitution of Missouri, 1945, which reads in part:

"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. \* \* \*"

Furthermore, the Constitution of this state specifically authorizes such legislation under Section 12(b), Article X, Constitution of Missouri, 1945, which reads:

"Nothing in this section shall prevent the refund of taxes collected hereunder to cities and towns for road and bridge purposes."

While the tax in question is assessed and levied by virtue of Section 11(c) of Article X, Constitution of Missouri, 1945, and Section 8606, Laws of Missouri, 1945, supra, and while the Constitution grants the Legislature authority to allocate such taxes levied on property located within the special road districts to them, apparently the Legislature has not seen fit to enact such legislation in the instant case, and in the absence of same, such taxes, when collected, must all go into the county treasury and be kept in the separate fund known as "The Road Bond Construction Fund" as

Mr. J. B. Murphy

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provided in Section 8606, page 1478, Laws of Missouri, 1945.

#### CONCLUSION

Therefore, it is the opinion of this department that property located within special road districts in your county is subject to taxation under Section 8606, page 1478, Laws of Missouri, 1945; furthermore, that you, as collector, are not entitled to collect all other taxes against property in your county on any particular piece of property and not collect the tax levied to retire this bonded indebtedness, but it is your duty to collect all taxes levied on such property except as otherwise provided in Section 11084, R. S. Mo. 1939; and last, that the special road districts in your county are not entitled to receive any of the taxes in question that have been levied against property located in such special road districts, in the absence of legislation requiring such taxes to be allocated and transferred to the respective special road districts, in your county.

Respectfully submitted,

AUBREY R. HAMMETT, JR.  
Assistant Attorney General

APPROVED:

J. E. TAYLOR  
Attorney General

ARR:VLM