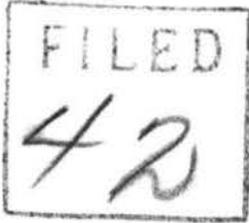


ROADS AND BRIDGES: Township special road and bridge tax paid to county treasurer under Sec. 137.585, RSMo 1949; county may retain not to exceed five cents on the one hundred dollars assessed valuation for the county special road and bridge fund and is not required to spend amount withheld in township in which collected.

JOHN M. DALTON
XXXXXXXXXX



June 17, 1953

John C. Johnsen
XXXXXX

Honorable Charles J. Hoover
Prosecuting Attorney
Grundy County
Trenton, Missouri

Dear Sir:

We have received your request for an opinion of this office, which request is as follows:

"A controversy has arisen in Grundy County concerning the procedure followed by the County Court relative to the County Special Road and Bridge Fund. The County Court requested that I ask your office for an opinion on this matter. I in turn requested the County Court to submit to me information from which I could frame a letter to you. As a result of this request to the County Court, the Court, together with the County Treasurer, wrote a memorandum which appears to adequately set forth the facts. Hence, I am quoting their memorandum and I shall be glad to furnish any specific information which your office might request.

'Grundy County is a township organization county. The County Court of this county ordered the County Treasurer in 1948 to retain an amount of .05¢ on the \$100.00 assessed valuation out of the Special Road and Bridge Fund, and to transfer the same to the County Special Road and Bridge Fund. The authorization of this order is Sec. 137.585 R.S. 1949. This section directs the township collectors to turn in to the county treasurer their collections of Special Road and Bridge Tax.

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'The clerk of the Trenton Township board has questioned the right of the county court to retain this .05¢ on the \$100. valuation and the need of the township collectors to pay to the county treasurer their road and bridge collections, and cites Sec. 139.430 R.S. 1949 which directs the township collectors to pay over to the county treasurer and ex-officio collector, all state and county taxes collected by him and to pay to the township directly all township taxes and funds of every kind belonging to the township. The clerk claims that these two sections are contradictory.

'Will you please advise me

1. Whether or not the county court is within its rights in requiring the township collectors to pay over to the county treasurer the special road and bridge tax collected by them, together with their state and county collections.
2. Their right to retain .05¢ on the \$100. assessed valuation for the county special road and bridge fund.
3. The clerk of Trenton Township also raises the question as to whether or not the county court is required to spend the money derived from the .05¢ on the \$100. valuation in the township from which that money was derived. It has been the practice of this county to put money in the special road and bridge fund and spend it as needed in the county at large.

/s/ Ben W. Gallup
County Treasurer'

"I shall appreciate your opinion in regard to the three questions forwarded to me by the Court."

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Section 137.585, RSMo 1949, provides:

"1. 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.

"2. 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, except that amounts collected within the boundaries of road districts formed in accordance with the provisions of chapter 233, RSMo 1949 shall be paid to the treasurers of such road districts; 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."

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Section 139.430, RSMo 1949, provides, in part:

"2. On or before the tenth day in each month, the township collector, after deducting his commissions, shall pay over to the county treasurer and ex officio collector all state and county taxes collected by him during the preceding month, as shown by the statement required by this section, and take duplicate receipts therefor, one of which he shall retain and the other he shall file with the county clerk; and the county clerk shall charge the treasurer with the amounts so receipted for, to be accounted for at the annual settlement.

"3. The township collector, in like manner, on or before the twentieth day of each month, shall pay over to the township trustee and ex officio treasurer after deducting his commission all township taxes and funds of every kind belonging to the township, collected by him during the preceding month, and take duplicate receipts therefor, one of which he shall retain and the other he shall deposit with the township clerk, who shall charge the township trustee and ex officio treasurer with the amount so receipted."

There does appear to be some conflict between Sections 137.585 and 139.430, above quoted, insofar as the duty of the township collector is concerned. However, the application of a well-established principle of statutory construction resolves such conflict. "Under the established rules of statutory construction where there are two laws relating to the same subject they must be read together and the provisions of the one having a special application to a particular subject will be deemed to be a qualification of, or an exception to, the other act general in its terms." *Eagleton v. Murphy*, 348 Mo. 949, 156 S.W. (2d) 683, l.c. 685.

Applying that rule to these statutes, Section 137.585 is a special statute applicable to the handling of the funds there involved, and consequently will prevail as to such funds over the provisions of Section 139.430.

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This construction is also supported by Section 12(a) of Article X of the Constitution of Missouri, 1945, under which the tax involved is levied. That section provides, 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. * * *"
(Emphasis ours.)

As to the second question, Section 137.585 clearly permits the county court to retain an amount not to exceed five cents on the one hundred dollars assessed valuation out of the special road and bridge fund therein provided. We perceive no grounds for holding such provision invalid, and therefore under such section the court does have the right to retain the amount therein provided.

As to the third question, Section 137.585 provides that the amount retained by the county shall be transferred to the county special road and bridge fund. No limitation is provided regarding the place in which the amount withheld shall be expended. The county court is required to retain a uniform amount as to all townships levying and paying the tax, and in the absence of any limitation requiring the county court to expend the amount withheld from the tax levied in a particular township within such county, we are of the opinion that the expenditure of the fund is a matter for determination by the county court.

CONCLUSION

Therefore, it is the opinion of this office that:

1. Township collectors are required to pay the special road and bridge tax levied under Section 137.585, RSMo 1949, to the

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county treasurer, in accordance with that section, and not to the township trustee, under Section 139.430, RSMo 1949;

2. The county court may retain an amount not to exceed five cents on the one hundred dollars assessed valuation out of the special road and bridge tax assessed under Section 137.585; and

3. The county court is not required to spend the amount withheld by it in the township in which the special road and bridge tax was collected.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Robert R. Welborn.

Yours very truly,

JOHN M. DALTON
Attorney General

RRW:ml