

TOWNSHIP ORGANIZATION: Township board should retain moneys
PAYMENT OF BONDS: collected from levies for paying
bonds of the township.

December 20, 1939

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Dear Sir:

This is in reply to yours of recent date wherein you request an opinion on the question of whether or not township officials in counties operating under township organization have a right to retain the amount of taxes realized from levies for paying off bonds in order that the township retire the bonds and pay the interest as it becomes due. These are road bonds to which you refer in your letter we assume.

After bonds for road purposes have been voted in townships under township organization, a plan of collection of taxes for the payment of these bonds is set out in Section 7961, R. S. Missouri 1929, which provides in part as follows:

"* * * * If it shall appear that two-thirds of the voters voting at such election on said question shall have voted in favor of the issuance of said bonds, the board of commissioners of the special road district, or the county court, as the case may be, shall order and direct the execution of the bonds for and on behalf of such special road district or township, and shall provide for the levy and collection of a direct annual tax upon all the taxable property in said district or township suf-

ficient to provide for the payment of the principal and interest of the bonds so authorized as they respectively become due. It shall be the duty of the clerk of the board of commissioners on or before the first day of May in each year, or the state auditor immediately thereafter, in case the clerk of the board of commissioners should fail or neglect, on or before the first day of May of each year, so to do, to certify to the county court of the county, or counties, wherein such road district is situated, the amount of money that will be required during the next succeeding year to pay interest falling due on bonds issued and the principal of bonds maturing during such year. On receipt of such certificate it shall be the duty of the county court, or courts, at the time it makes the levy for state, county, school and other taxes, to, by order made, levy such a rate of taxation upon the taxable property in the road district, in such county or counties, as will raise the sum of money required for the purposes aforesaid. On such order being made it shall be the duty of the clerk of the county court, or courts, to extend such rate of taxation upon the tax books, against all of the taxable property in the district in such county or counties, and the same shall be collected by the collector of the revenue at the time and in the manner, and by the same means as state, county, school and other taxes are collected. * * *

Since this section provides that taxes for the

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payment of bonds shall be collected as other taxes are collected, we will look to the laws applicable to collection of taxes in counties under township organization to determine in what manner such collections shall be made.

Section 12318, R. S. Missouri 1929, provides as follows:

"It shall be the duty of the county clerk of each county in this state, that has or hereafter may adopt township organization, to make out annually, for the use of the township collector of each township, correct lists of the property assessed, which lists shall be in alphabetical order, the names of the persons owing tax on personal property in each collector's district, the aggregate value of such property assessed to each person, and the amount of taxes due thereon. He shall also make out for the use of the township collector an abstract of all real property which is assessed, in numerical order, which shall show the name or names, if known, of the person or persons to whom each tract or lot is assessed, and the value of each tract or lot, and the amount of taxes due thereon, which list shall be made out in strict conformity with the forms and instructions furnished by the state auditor."

Section 12319, R. S. Missouri 1929, provides as follows:

"The county clerk shall cause to be estimated and set down in separate columns, to be prepared for that purpose, in the copied assessment roll, opposite the several sums set down as the valuation of real and personal estate,

the respective sums, in dollars and cents, to be paid as taxes thereon, stating separately the amount of state, county, township, school, bridge and other tax."

Section 12320, R. S. Missouri 1929, provides as follows:

"The county clerk shall cause a copy of the assessment roll of each township in their respective counties, with the taxes extended thereon, to be delivered to the collector of such township, on or before the day in each year, as fixed by law, when taxes become due."

Section 12321, R. S. Missouri 1929, provides as follows:

"To each assessment roll a warrant under the hand of the county clerk and seal of the court shall be annexed, commanding such collector to collect from the several persons named in the assessment roll the several sums mentioned in the last columns of such roll, opposite their respective names; the warrant shall direct the collector, out of the moneys collected, after deducting the compensation to which he may be lawfully entitled, to pay over to the county treasurer the state and county tax collected by him. He shall pay over to the township treasurer all school moneys collected by him, and all moneys collected for township expenses, and all moneys collected for road and bridge purposes."

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The foregoing sections set out the plan provided for the collection of taxes and the disposition to be made of them by the collector. Said Section 12321 provides that all such taxes be turned over to the township treasurer.

Section 12268, R. S. Missouri 1929, provides that the township treasurer shall be ex-officio treasurer of the township. It provides in part as follows:

"There shall be chosen at the biennial election in each township one trustee, who shall be ex officio treasurer of the township, one township collector, and one township clerk, who shall be ex officio township assessor, one constable, two members of the board, and two justices of the peace: * * * * *

In speaking of the duties of the treasurer and ex-officio treasurer in counties under township organization, Section 12290, R. S. Missouri 1929, provides as follows:

"He shall keep a correct account of all moneys coming into his hands by virtue of his office, from what source received, and what amount, of the amount paid out, to whom paid, and on what account, in a book to be kept by him and provided for the purpose by the township; * * * * * and receive all money in the hands of the county treasurer belonging to his township, and receipt for the same, * * * * *

Said Section 12321 requires the county collector to pay over to the township treasurer all moneys collected for township expenses and all moneys collected for road and bridge purposes. Since the bonds were sold for road and bridge purposes, the taxes collected to pay these bonds would be tax collected for road and bridge purposes and, therefore, should be turned over to the township treasurer to be distributed as is pro-

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vided by Section 12291, R. S. Missouri 1929, which provides in part as follows:

"The township trustee and ex officio treasurer shall not pay out any moneys belonging to the township for any purpose whatever, except upon the order of the township board of directors, signed by the chairman of said board and attested by the township clerk: * * * * *

By the foregoing sections it will be seen that the lawmakers have provided a system for the levy and collection of taxes for road purposes and special road districts in townships under township organization. This includes taxes raised for the payment of bonds issued by such special road district. The collectors collect these taxes and turn them over to the township trustee who is ex-officio treasurer of the township and then it is his duty to pay out these moneys only on the order of the township board.

In the case of Sherlock v. Duck Creek Township, 92 S. W. (2d) 675, the court, in arriving at its opinion in that case, adopted the rule that under the statutes, township boards should retain these bond moneys and retire the bonds and interest out of the moneys which are turned over to the trustee and ex-officio treasurer by the collector of revenue.

CONCLUSION.

From the foregoing it is the opinion of this department that the township board in counties under township organization should retain the moneys which are collected for the purpose of paying the bonds of the township, and that said board should pay out said moneys for the purpose of retiring the bonds and interest as they become due.

Respectfully submitted

APPROVED:

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