

**Counties—Funds — Highways and Roads — Poll Tax—
Road District—Taxation.**

Moneys collected from the road poll tax belong to the general road fund of the county and not to the road fund of any special road district.

When a proposed district embraces two or more precincts, a petition for the creation of a special road district is sufficient if signed by fifty-one per cent of the registered electors of the proposed district, and the fact that fifty-one per cent of the voters in any one precinct of the proposed district opposes the creation of such district is not sufficient to warrant the Commissioners in excluding that particular precinct from the special district.

Stuart McHaffie, Esq.,
County Attorney,
Ryegate, Montana.

My dear Mr. McHaffie:

You have submitted to this office the following questions:

1. "Does the special road district treasury lose the funds accruing from the general road tax of \$2.00 on each male person?"

2. "When a petition is presented to the Board of County Commissioners, praying for the formation of a special road district and signed by 51% of the registered voters in the territory to be affected (being two or more precincts), may the Commissioners withdraw one certain precinct from the proposed special district upon the petition of 51% of the voters of that precinct who oppose the creation of such special road district?"

Your first question is answered by the provisions of Section 1617, Revised Codes of 1921, which provides for the collection of a general tax of two mills, and not more than five mills, which shall be payable to the County Treasurer with other general taxes; also for the establishment of a general road tax of \$2.00 on each male person over the age of twenty-one years, and under the age of fifty years. And further provides that all moneys collected under the provisions of this Act shall belong to the general road fund of the county.

It follows that any moneys collected under the provisions of this Act belong to the general road fund and not to the road fund of any special road district.

In answer to your second question, I call your attention to the provisions of Section 1655, Revised Codes of 1921. This section provides, in part, as follows:

"If a county is not divided into special road districts as provided for in Sections 1654-1655 of this code, the registered voters of any voting precinct or precincts of any county in the state, desiring to establish a special road district under this Act, may do so by first filing with the Board of County Commissioners a petition duly and regularly signed by fifty-one per cent of the registered electors of the proposed district," * * *.

From the language of this statute, it was apparently the intention of the Legislature to permit the formation of special road districts from one or more precincts. If the proposed district embraced but one precinct, then of course the petition must be signed by 51% of the voters of that precinct. If the proposed district embraced two or more precincts, then the Legislature evidently intended that all that was necessary was to secure 51% of the registered electors of the proposed district. This intent is evidenced by the use of the language: "A petition duly and regularly signed by fifty-one per cent of the registered electors of the proposed district."

It is, therefore, my opinion that when a proposed district embraces two or more precincts, a petition for the creation of a special road district is sufficient if signed by fifty-one per cent of the registered electors of the proposed district, and that the fact that fifty-one per cent of the voters in any one precinct of the proposed district opposed the creation of such district is not sufficient to warrant the Commissioners in excluding that particular precinct from the special road district.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.