

General Road Fund—Special Road District Fund—Tax Levy—Funds.

The two-mill levy is for the general road fund of the county, while the levy requested by the Directors of the special road district up to five mills should go into the special road district fund.

John B. Tansil, Esq.,
County Attorney,
Billings, Montana.

My dear Mr. Tansil:

You have asked my opinion regarding the interpretation of Sections 1659 and 1661, R. C. M. 1921, and especially whether any part of the levy made for special road districts under Section 1659 is placed to the credit of the general road fund of the county, or whether both the two mill and five mill levies go to the special road district fund.

Section 1661 merely directs that the funds raised for special road districts shall be kept in a separate fund and used only for the highways and bridges within the limits of such district, but does not aid us in determining what levy shall go into such special fund.

Section 1659, R. C. M. 1921, provides, in part, as follows:

“The Board of County Commissioners of any county where special road districts under the provisions of this Act are organized, may levy a tax for general road purposes of not to exceed two mills on each dollar of assessed valuation in said special road district, and in addition to such two-mill levy shall levy a tax of not to exceed five mills on each dollar of assessed valuation, if such levy shall be requested by the directors of the special district in writing, on or before the tenth day of August in each year.” * * *

Section 1617, R. C. M. 1921, provides for an annual levy of not less than two mills, and not more than five mills, on the taxable property of the county outside of incorporated cities and towns which provide for a like general tax for street and alley purposes to be made by the Board of County Commissioners.

If both the two and five mill levies provided for in Section 1659 go to the special road district, is the two to five mill levy provided for in Section 1617 for general road purposes also levied within special road districts? In other words, assuming that the maximum levy was made in the district, which would be seven mills, and the maximum was levied in the county, which would be five mills, would property within a special road district be subject to a levy of twelve mills? I think not. It will be noted that the two mills levy in both the county and road district is made by the County Commissioners

on their own motion, while the additional levy up to five mills in road districts is made only if requested by the directors of the road district. Furthermore, the two mill levy under Section 1659 is made for "general road purposes."

It is, therefore, my opinion that the two mill levy made under Section 1659 is intended for the general road fund of the county and should be placed to the credit of that fund, while only the levy requested by the directors of the special road district up to five mills should go into the special road district fund to be expended as directed by Section 1661.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.