

Road Districts—Gasoline Tax—Taxes—Funds—Counties.

Road districts are not entitled to receive any portion of the gasoline tax distributed under section 2392, R. C. M. 1921, as amended. This should be expended by county for highway betterments and improvements, on all highways of county whether without or within road districts.

R. V. Bottomly, Esq.,
County Attorney,
Chinook, Montana.

November 24, 1925.

My dear Mr. Bottomly:

You have submitted to this office the question whether special road districts, created under chapter 128, R. C. M. 1921 (comprising sections 1652 to 1675, inclusive), are entitled to an apportioned share of the gasoline and automobile license taxes which are apportioned to the county under the provisions of section 2392, as amended by chapter 186, laws of 1925.

The purpose of permitting the creation of special road districts was to give to localities included therein the right to expend funds, raised for road purposes within the territory, for the betterment and improvement of highways therein.

At the time of the enactment of these sections the gasoline license tax had not been enacted and, of course, there was no provision in it for disbursing funds raised by this method. Consequently, there is no provision in the statute relative to the creation of special road districts giving them a right to receive any part of the gasoline tax that is apportioned to the county nor is there any provision in the act which provides for the distribution of this fund that any part of it shall be given to special road districts. The act provides:

"The remaining fifty-five per cent of such money received by said state treasurer, under the provisions of this act, shall, at the end of each fiscal year, be pro-rated equally among and be paid over to each of the several counties of the state, to the credit and use of the general road funds, and for the maintenance and construction of highways therein."

Suppose that all of the territory of a county outside of the limits of incorporated cities and towns was included in special road districts. Would this relieve the county of its obligation to expend this trust fund, dedicated to highway construction and maintenance, for the purpose to which it is dedicated? Primarily, it is the duty of the county to construct and maintain highways, and the creation of a special road district does not relieve the county of this obligation.

It is, therefore, my opinion that no part of the funds should be apportioned to a special road district but that the county is required to expend them for highway maintenance and construction throughout the county, and that this includes the roads of special road districts as well as roads not included in these special road districts.

Very truly yours,

L. A. FOOT,

Attorney General.