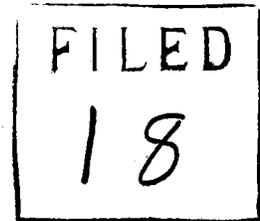


SPECIAL ROAD DISTRICTS:
TOWNSHIP ORGANIZATION:

Special road district formed in county not under township organization under provisions of Arts. 10 or 11, Chap. 46, R.S.A., is not automatically dissolved when county votes in township organization, but such road district is not entitled to any part of taxes received by county or township under provisions of Sec. 8527, Laws 1945, p. 1478, or Sec. 8820, H.B. 42, 64th General Assembly.

October 13, 1947

Honorable Frank Collier
Prosecuting Attorney
Wright County
Mountain Grove, Missouri



Dear Sir:

This is in reply to your letter of recent date, requesting an official opinion of this department, which reads as follows:

"As prosecuting attorney of Wright County, I request the opinion of your office on the following:

"For many years prior to the adoption of township organization in Wright County the Mansfield Special Road District existed in Pleasant Valley Township of said county. Since the adoption of township organization, 1920, the road district has continued to operate and exist under the former organization.

"The question arises as to whether the adoption of township organization in the county automatically dissolved the special road districts that existed in the county at the date thereof, or whether they must be dissolved as other districts are provided for.

"It has been contended that the district was automatically dissolved, and that the officers of the district, as well as of the township are violating the law in collecting and disbursing funds."

There is no provision in Chapter 101, Mo. R. S. A., the chapter on township organization, which provides for the dissolution of a special road district organized in a county not under

township organization when such county votes in township organization.

A method of dissolution of the "eight mile" special road districts in counties not under township organization is provided for in Section 8706, Mo. R. S. A., which is for resubmission after the expiration of four years after formation of the district, upon the petition of fifty resident taxpayers. The county court then holds an election for voting for or against dissolution of the district.

Section 8707, Mo. R. S. A., provides the method of including in the tax levy money needed to pay the principal and interest on bonds that any such road district has issued, if such district is dissolved.

The method for dissolution of "benefit assessment" special road districts in counties not under township organization is provided in Sections 8730 and 8731, Mo. R. S. A. Section 8730 provides the method of dissolution upon the application of any owner of land within the road district, and Section 8731 provides the method for dissolution upon the petition of the owners of a majority of the acres of land within such road district.

Section 8732, Mo. R. S. A., provides that such dissolution shall not invalidate or affect any right accruing to the road district or to any person, or invalidate any contract with regard to such road district.

Section 8733, Mo. R. S. A., provides for the appointment of a trustee for the road district by the county court when such road district is dissolved.

Sections 8734 and 8735, Mo. R. S. A., provide for the duties of the trustee and for the final settlement of such trustee.

Since Chapter 101, Mo. R. S. A., contains no provision for the dissolution of a special road district formed in a county not under township organization when such county does vote to become a county under township organization, and the Legislature has provided statutory methods for dissolution of the "eight mile" and "benefit assessment" special road districts in counties not under township organization, it is our opinion that the mere fact that in Wright County, in 1920, township organization was adopted did not in and of itself dissolve a special road district which was in existence prior to such time.

In the case of State ex rel. v. Thompson, 315 Mo. 56, the Supreme Court of Missouri had before it a case involving an "eight

mile" special road district, that is, one formed under what is now Article 10, Chapter 46, Mo. R. S. A., and the court said, l. c. 68:

"The road district, in this case is, in the broad sense, a municipal corporation, a political subdivision of the State, with power to impose general taxes to carry out the purpose for which it exists. * * *

"The district here exists in perpetuity, or until disorganized by legislative act. * * *"

In the case of State ex rel. v. Burton, 266 Mo. 711, the Supreme Court had before it a case involving a "benefit assessment" special road district formed in a county not under township organization under the provisions of what is now Article 11, Chapter 46, Mo. R. S. A., and the court said, l. c. 722-723:

"The power of the Legislature in the creation of municipalities and public corporations of every description is not only absolute but unlimited in the absence of constitutional inhibitions. In the presence of this power we must presume that in the creation of the special road districts the Legislature deemed them necessary, expedient and in the public interest. Thus formed, authority exists as a necessary consequence of legislative power, to provide means for their perpetuation or maintenance or their change or abolition, as in the wisdom of the Legislature seems best."

From the opinions in the cases above quoted we believe that it is clear that such special road districts do continue their existence until dissolved in the manner provided for by the statutes of this state, above pointed out.

However, it is our further opinion that the special road district in Wright County, whether an "eight mile" district or a "benefit assessment" road district, is not entitled to the road taxes collected under the provisions of Section 8527, Laws of Missouri, 1945, page 1478, four-fifths of which taxes are allotted to the "eight mile" road district by Section 8691, Laws of Missouri, 1945, page 1494, and to the "benefit assessment" road district in counties not under township organization by Section 8715, Laws of Missouri, 1945, page 1496.

Section 8527, Laws of Missouri, 1945, page 1478, provides, in part, as follows:

"In addition to other levies authorized by law, the county court in counties not adopting an alternative form of government and the proper administrative body in counties adopting an alternative form of government, in their discretion may levy an additional tax, not exceeding thirty-five cents on each one hundred dollars assessed valuation, all of such tax to be collected and turned into the county treasury, where it shall be known and designated as 'The Special Road and Bridge Fund' to be used for road and bridge purposes and for no other purpose whatever; Provided, however, that all that part or portion of said tax which shall arise from and be collected and paid upon any property lying and being within any special road district shall be paid into the county treasury and four-fifths of such part or portion of said tax so arising from and collected and paid upon any property lying and being within any such special road district shall be placed to the credit of such special road district from which it arose and shall be paid out to such special road district upon warrants of the county court, in favor of the commissioners or treasurer of the district as the case may be; * * * "

We are enclosing a copy of an official opinion of this department rendered under date of July 18, 1947, to R. E. Moulthrop, in which we hold that no levy under authority of Section 8527, Laws of Missouri, 1945, page 1478, may be made by the county court in a county under township organization.

Section 8820 of House Bill No. 42 of the 64th General Assembly, which bill became effective September 10, 1947, provides, in part, as follows:

" * * * except that amounts collected within the boundaries of road districts formed in accordance with the provisions of Article 18, Chapter 46, Revised Statutes of Missouri, 1939, shall be paid to the treasurers of such road districts; * * * "

It is clear, then, that under the provisions of Section 8820, in counties under township organization, the money arising from the thirty-five cent tax provided therein shall be paid only to the treasurers of special road districts formed under the provisions of Article 18, Chapter 46, Mo. R. S. A., and such tax money cannot be paid to road districts organized under the provisions of Articles 10 or 11, Chapter 46, Mo. R. S. A.

CONCLUSION

It is the opinion of this department that a special road district organized in Wright County under the provisions of Articles 10 or 11, Chapter 46, Mo. R. S. A., prior to the adoption of township organization in such county in 1920, was not dissolved by the adoption of township organization by Wright County.

It is further the opinion of this department that none of the taxes authorized to be levied by Section 8527, Laws of Missouri, 1945, page 1478, or Section 8820 of House Bill No. 42 of the 64th General Assembly, can be turned over to such road district.

Respectfully submitted,

C. B. BURNS, JR.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General