

ROADS AND BRIDGES: "General road districts" must be established by county court.

5/28

May 16, 1947



Honorable Julian L. O'Malley  
Prosecuting Attorney  
Clinton County  
Plattsburg, Missouri

Dear Sir:

This is in reply to your letter of recent date wherein you request an opinion from this department based upon the following statement of facts:

"In Clinton county we have three special road districts formed under Art. 10, Ch. 46, R.S. Mo. 1939. We have no benefit assessment districts formed under Art. 11, Ch. 46, R.S. Mo. 1939. At the present time we have no 'common road districts' organized, set up or numbered as provided in Art. 3, Ch. 46, R.S. Mo. 1939. No road overseers are serving by appointment in this county as directed by Sec. 8516, R.S. Mo. 1939, as reenacted, H.C.S.H.B. 784, 63rd Gen. Assembly. Since no colorable compliance has been had with the provisions of Art. 3, Ch. 46, R.S. Mo. 1939, the law which recognizes common road districts, in this county, it is my opinion that an election may not be called throughout this county, exclusive of the three special road districts, in an effort to authorize the levy provided for in Sec. 8529, H.C.S.H.B. 784, 63rd Gen. Assembly.

"May I have your opinion touching this question for submission to the county court of this county."

It appears from the first paragraph of your request (not quoted here) that the qualified voters and taxpayers residing in the purported "general road districts" in your county are petitioning the county court for an election to authorize an additional levy for road purposes under authority of Section

8529 of H.C.S.H.B. No. 784, passed by the 63rd General Assembly. The part of the section pertinent to your question reads as follows:

"Whenever ten or more qualified voters and taxpayers residing in any general or special road district in any county in this state shall petition the county court of the county in which such district is located, asking that such court call an election in such district for the purpose of voting for or against the levy of the tax provided for in the second sentence of the first paragraph of Section 12 of Article X of the Constitution of Missouri, it shall be the duty of the county court, upon the filing of such petition, to call such election forthwith to be held within 20 days from the date of filing such petition.\* \* \*

The court, as we understand your question, is planning to call the election for the "general road district" which, it is claimed, constitutes all territory in that county except that which is in special road districts.

The question here is "is there any territory in the county in a general road district?" It seems to be conceded in your letter that there is some territory in the county not embraced in special road districts, but according to your letter you do not think this territory is in a general road district because there is no general or common road district formed in the county as is provided by Article 3, Chapter 46, R. S. Mo. 1939.

Under Section 8514, Article 3, Chapter 46, R. S. Mo. 1939, provisions for establishing common or general road districts are as follows:

"The county courts of all counties, other than those under township organization, shall, during the month of January, 1918, with the advice and assistance of the county highway engineer, divide their counties into road districts, all to be numbered, of suitable and convenient size, road mileage and taxable property considered. Said courts shall, during the month of

January biennially thereafter, have authority to change the boundaries of any such road district as the best interest of the public may require."

As to whether or not the county court has organized the general or common road districts in the county would depend upon what the record of the county court reveals. Without any record that the county court has followed the provisions of said Section 8514 and organized or divided the county into common road districts, we think you are correct in your contention that there are no such districts. On the question of the necessity of a record, we find that in the case of Boatright vs. Saline County, 169 S.W. (2d) 371, the court quoted and applied the principle that "\*\*\* a county court may speak through its records.\*\*\*" For the purpose of this opinion, we are assuming that if any record of the action of the county court, with respect to dividing the county into road districts, has been made that it was made prior to the adoption of the Constitution of 1945 and prior to the repeal of Section 1990, R. S. Mo. 1939, which provided that county courts were courts of record.

You do not state in your letter whether or not the county court has done anything by record or otherwise towards organizing or recognizing the territory here in question as a common road district. Of course, if there is any record of the court which would indicate the creation of such district or districts and if the county court by its action has recognized the district or districts as such, then we think the district would be held to have been validly created. It appears from the cases that the courts have liberally construed actions of county courts or administrative bodies in passing upon the acts of such bodies. In the case of Greenfield vs. Petty et al., 145 S.W. (2d) 367, 371, the court applied the foregoing principle in the following language:

"\*\*\* It has been said many times that orders of boards or courts administered by men not trained in the law must be construed not strictly but according to their intent.\*\*\*"

If there is a record which tends to show that the county court has attempted to divide the county into road districts or even to make a portion of the county into one district, and if such record is incomplete, we think the court at this time would have authority to make a nunc pro tunc entry showing the facts.

In the case of Farris vs. Burchard, 262 Mo. 334, 342, the court, in applying the foregoing principle, made the following statement with respect to the statute of limitations in making such orders:

"\* \* \* No Statute of Limitations applies to and bears the right of the court to put in proper form at any time that which appears from its records to have been done and to have been imperfectly or informally recorded. \* \* \* "

In that case the court held that a nunc pro tunc entry could be made to correct a record which had been made some 45 years prior thereto.

We also note from your letter that in support of your contention that no district has been organized that no road district has been numbered and no overseers have been appointed. In regard to the point that the court has failed to appoint road overseers, we do not think that would be conclusive on the question of whether or not the district has been organized. On this particular question, I find that the Attorney General's Office in 1935 rendered an opinion covering this question. The opinion is dated January 25, 1935, and addressed to Mr. W. W. Crockett, Prosecuting Attorney of Ralls County, and written by Mr. Edward H. Miller, Assistant Attorney General. We are enclosing a copy of this opinion for your information.

Nor do we think that the failure to number the districts would be conclusive on the question of whether or not the county had organized a common road district. In connection with this thought, we are enclosing a copy of an opinion to Mr. E. H. Stark, Judge of the County Court of Miller County, dated February 1, 1944, holding that the county court might form all of the common road districts into one district.

#### CONCLUSION

From the foregoing, it is the opinion of this department that if there is no record made by the county court of the dividing of the county into common road districts, that is that portion of the county which is not in special road districts, then there would not be a "general road district" in such county within the meaning of said Section 8529 of H.C.S.H.B.

Hon. Julian L. O'Malley

-5-

No. 784, such as would authorize the taxpayers in such territory to petition the county court for the election to vote the levy provided for in said section.

We are further of the opinion that if the county court has at some previous time taken any action towards dividing the county into common road districts or into one common road district, that is the territory outside of special road districts, and if there is any record which might tend to show such action that the county court can now by a nunc pro tunc entry make its record conform to the facts, and if in such a case the record reveals that a common road district has been formed, then the voters and taxpayers in such district would be qualified to petition the county court for the election authorized by said Section 8529 of said H.C.S.H.B. No. 784.

Respectfully submitted,

TYRE W. BURTON  
Assistant Attorney General

APPROVED:

---

J. E. TAYLOR  
Attorney General

TWB:VLM

Enc.