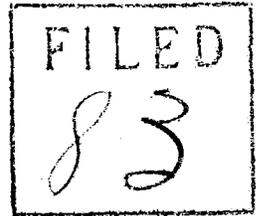


ROAD DISTRICTS: Special road district and township in Bates  
TOWNSHIPS: County are both entitled to have bonds registered  
ELECTIONS: when bonds of both political subdivisions were  
BONDS: voted on same day and proceedings for election  
by township were initiated before proceedings  
by special road district.

July 31, 1947



Honorable Forrest Smith  
State Auditor  
Jefferson City, Missouri

Dear Sir:

This is in reply to your letter of recent date request-  
ing an official opinion of this department, and reading as  
follows:

"We are enclosing herewith copy of a  
letter received from Fred J. Hupp,  
County Clerk, Bates County, Missouri,  
relating to Lone Oak Township and  
Cornland Special Road District elec-  
tions held on June 17, 1947, in which  
the special road district and the  
township voted on bond issues and  
both of the issues carried. We would  
like to have your opinion concerning  
the question raised in said letter."

Mr. Hupp's letter reads as follows:

"In Bates County we have a township,  
Lone Oak, that has a special road  
district in it (Cornland Special Road  
District).

"On June 17, 1947, both the special  
road district and the township voted  
on a bond issue and both of the issues  
carried.

"We understand that if the special road  
district has an indebtedness, the town-  
ship cannot vote bonds, so we are won-  
dering which bonds should be registered.

Both elections were held on the same date; however, the notice of publication for the township appeared in the newspaper first."

Section 8843, R. S. Mo. 1939, authorizes the issuance of bonds and provides the procedure to be followed in holding an election to determine the question of whether or not such bonds shall be issued in special road districts in counties under township organization.

Section 8609, Laws of Missouri, 1945, page 1499, authorizes the issuance of bonds by a township or by a special road district organized and incorporated under the provisions of Article 10, Chapter 46, R. S. Mo. 1939, the special road district authorized to be organized and incorporated under Article 10, Chapter 46, R. S. Mo. 1939, being the eight mile road district in counties not under township organization.

Section 8610, R. S. Mo. 1939, provides for the holding of an election in a township or any special road district.

Section 8611, R. S. Mo. 1939, provides the form of ballot when a township or any special road district votes on the question of issuing bonds.

Section 8612, R. S. Mo. 1939, provides for the procedure to be followed in selling the bonds voted by a township or any special road district.

Section 8613, R. S. Mo. 1939, provides as follows:

"The four next preceding sections, to wit: sections 8609, 8610, 8611 and 8612, shall not apply to any township, the whole or any part of which is included in a special road district that has issued bonds, the whole or any part of which are outstanding and unpaid; nor shall said sections apply to any special road district which includes the whole or any part of any township which has issued bonds for road purposes, the whole or any part of which bonds are outstanding and unpaid, nor shall said sections apply to any special road district which includes the whole or any part of the territory of any other special road district which has incurred an indebtedness evidenced by an issue of bonds, the whole or any part of which are outstanding and unpaid."

Section 5 of an Act of the 46th General Assembly, Laws of Missouri, 1911, page 367, entitled "An Act authorizing township road bonds and providing for the payment thereof, with an emergency clause," provides as follows:

"Township as used in this act shall be held to include any township whose boundaries and name have been fixed according to law."

Townships whose boundaries and names have been fixed according to law are those provided for in Article 3, Chapter 100, R.S.A. (counties not under township organization), and Chapter 101, R.S.A. (counties under township organization).

Section A of House Bill No. 337, Laws of Missouri, 1917, page 445, provides, in part, as follows:

" \* \* \* and also an act of the forty-sixth general assembly, entitled 'An act authorizing township road bonds and providing for the payment thereof, with an emergency clause,' approved March 18, 1911; and also an act of the forty-sixth general assembly, entitled 'An act authorizing special road districts to issue bonds and providing for the payment thereof, with an emergency clause,' approved March 18, 1911; \* \* \* be and the same are hereby repealed, and the following five articles, in relation to the same subject matter, be enacted in lieu thereof: \* \* \*"

Therefore, Section 88 of House Bill No. 337, Laws of Missouri, 1917, page 472, which authorized the issuance of road bonds by townships or any special road district, refers both to townships organized as authorized by Chapter 101, R.S.A., and by Article 3 of Chapter 100, R.S.A. Section 88 of such bill, as reenacted, Laws of Missouri, 1919, page 624; Laws of Missouri, 1923, page 346, and Laws of Missouri, 1945, page 1499, is now Section 8609, Laws of Missouri, 1945, page 1499, which provides for the issuance of road bonds both by townships organized under the provisions of Chapter 101, R.S.A., and Article 3 of Chapter 100, R.S.A., and issuance of road bonds by special road districts organized under the provisions of Article 10 of Chapter 46, R.S.A.

In the case of State ex rel. v. Hackmann, 297 Mo. 417, the question of whether a township in Howard County (a county not under township organization) could vote bonds when such township was included in a road district was before the court. The Supreme Court cited Section 10751, R. S. 1919, which, as reenacted, Laws of Mis-

souri, 1923, page 356, is now Section 8613, R. S. Mo. 1939, as the section to be construed to determine whether the township could vote road bonds. The court held in that case that such section prohibited any township which was in the whole or in part included in a special road district from issuing road bonds. After this case was decided, what is now Section 8613, R. S. Mo. 1939, was repealed and reenacted as Section 10751, Laws of Missouri, 1923, page 356, in the form in which it now appears, so that such section now prohibits the issuance of bonds by a township only if a special road district in which the township is in part at least included has issued bonds which are outstanding and unpaid.

Section 8843, R. S. Mo. 1939, which authorizes the issuance of bonds by a special road district in counties under township organization, was enacted as Section 10 of House Bill No. 728, Laws of Missouri, 1919, page 735. Before House Bill No. 728, Laws of 1919, was enacted, the only authorization for the issuance of road bonds by a special road district in counties under township organization was Section 38, Laws of 1917, page 472, supra. However, since House Bill No. 728, Laws of 1919, is a special law, referring only to special road districts in counties under township organization, such law is now the authority for the issuance by such road districts of road bonds, and provides the complete scheme for the holding of an election and the issuance of such bonds.

In the case of *State ex rel. Buchanan County v. Fulks*, 296 Mo. 614, 1. c. 626, the Supreme Court of Missouri said:

"Where there is one statute dealing with a subject in general and comprehensive terms and another dealing with a part of the same subject in a more minute and definite way, the two should be read together and harmonized, if possible, with a view to giving effect to a consistent legislative policy; but to the extent of any necessary repugnancy between them, the special will prevail over the general statute. Where the special statute is later, it will be regarded as an exception to, or qualification of, the prior general one; and where the general act is later, the special will be construed as remaining an exception to its terms, unless it is repealed in express words or by necessary implication." (See *Lazonby v. Smithey*, 151 Mo. App. 285, 289 and cases cited in *State ex rel. Lashley v. Becker*, 290 Mo. 1. c. 620.)"

We believe that the court, in the case of Lewis W. Thompson & Co. v. Conran-Gideon S. Road Dist., 19 S. W. (2d) 1049, held, in effect, that Article 18, Chapter 46, governed the entire procedure of the issuance of bonds by a special road district in counties under township organization. In this case a special road district in a county under township organization had issued bonds under the provisions of what is now Article 11, Chapter 46, R. S. Mo. 1939, and the court said that the bonds should have been issued under the provisions of what is now Article 18, Chapter 46, R. S. Mo. 1939. The court said, l. c. 1053:

" \* \* \* Under the record admission that New Madrid county was then under township organization, it must be assumed, for the purpose of this demurrer, that the trial court held that the bonds were issued under a statute that permitted their issuance, such as article 13 (sections 10937-10960), or even the general road law appearing in sections 10747 to 10750, R. S. 1919, rather than under a statute which did not permit their issuance in counties having township organization, such as article 8 (sections 10833-10857). \* \* \*"

It is to be noted that the court in that case did not specifically rule that bonds could not have been voted under the provisions of the general road law, that is, Sections 8610 to 8613, R. S. Mo. 1939, but held that the bonds would be presumed to have been issued under the provisions of what is now Article 18, Chapter 46, R. S. Mo. 1939. This holding by the court we believe to be authority for holding that the provisions of Article 18, Chapter 46, R. S. Mo. 1939, govern the proceedings for issuance and the issuance of bonds by special road districts in counties under township organization.

The action of the 63rd General Assembly, in amending Section 8609 so that such statute, in the Laws of 1945, refers only to townships and to special road districts organized under the provisions of Article 10, Chapter 46, R. S. Mo. 1939, was a legislative recognition that Sections 8843 and 8717, R. S. Mo. 1939, provided complete schemes for issuing bonds by special road districts in all special road districts except those organized under Article 10, Chapter 46.

Since Section 8843, R. S. Mo. 1939, provides the complete scheme for the issuance of bonds by special road districts organized in counties under township organization, the effect of Section 8613, R. S. Mo. 1939, is only to prohibit the issuance

of road bonds by a township which contains the whole or a part of a special road district, which special road district has issued bonds, the whole or any part of which are outstanding and unpaid, and to prohibit the issuance of road bonds by a special road district, which district is included in whole or in part in a township in a county not under township organization, which township had issued bonds which are outstanding and unpaid, and Section 8613 does not prohibit the issuance of bonds by a special road district when the township in a county under township organization in which all or a part of the special road district is located has issued bonds which are outstanding and unpaid.

We note from the notices of the bond elections held in the special road district and in the township that the proceedings for the election in the township were initiated prior to the date that proceedings were initiated for such election in the special road district. We deem it unnecessary then to discuss the question of what would have been the effect if the special road district had first initiated the special bond election proceedings, or what would have been the effect if the road district election had occurred before the township election.

#### CONCLUSION

It is the opinion of this department that the bonds authorized to be issued by both the Lone Oak Township and Cornland Special Road District in Bates County, Missouri, should be registered by the State Auditor, and the bonds issued by the township and by the special road district, after registration, will be valid obligations of such political subdivisions.

Respectfully submitted,

C. B. BURNS, Jr.  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General

CBB:HR