

October 16, 1949

10/18/49

Honorable John M. Cave
Prosecuting Attorney
Callaway County
Fulton, Missouri



Dear Sir:

Reference is made to your request for an official opinion of this department, reading as follows:

"Your opinion is hereby requested upon the following set of facts: The County Court of Callaway County constructed a bridge across a stream along a County road; subsequently a Special Road District was created including in its area a portion of the road containing the bridge; thereafter the road became impassable for any vehicle due to erosion of the road by the stream; after the creation of the Special Road District and until the road became impassable the costs of maintaining and repairing that bridge was borne by the Special Road District; in the order creating special road districts no mention is made of the ownership of the bridge in any respect. The County Court now desires to remove and rebuild the bridge on a different county road outside of the Special Road District. The impassable road is not, and for about two years has not been used by the public, all travel being upon other roads nearby. Under such circumstances, does the County Court have authority to remove that bridge, or does the bridge belong to the Special Road District? If the latter, in what way may the Special Road District give permission to the County Court to remove and relocate the bridge?"

We have been further advised that the special road district referred to in your letter was originally incorporated under the provisions of what now appears as Article 10 of Chapter 36, R. S. Missouri, 1939. We are further advised that the portion of the road upon which the bridge is located has been vacated by an order of the Callaway County Court under date of February 1, 1949.

The primary question raised by your inquiry is whether or not the incorporation of a special road district, encompassing an area within which is included a bridge previously built from county funds, has the effect of divesting title to such bridge from the county court as trustees for the inhabitants of the county.

We have examined the provisions of Article 10, Chapter 46, R. S. Missouri, 1939, and do not find that such transfer of title is so effectuated. It is true that the board of commissioners of such a special road district does have supervisory control over the public roads and highways within the area of such special road districts and is further authorized to maintain and repair such roads and bridges. The board of commissioners has further power with respect to the acquisition of necessary materials, tools, labor, etc., to carry out its duties. Section 8682, R. S. Missouri, 1939, reads as follows:

"Said board shall have sole, exclusive and entire control and jurisdiction over all public highways within its district, outside the corporate limits of any city or village therein to construct, improve and repair such highways, and shall remove all obstructions from such highways, and for the discharge of these duties shall have all the power, rights and authority conferred by general statutes upon road overseers, and said board shall at all times keep the public roads under its charge in as good repair as the means at its command will permit, and for this purpose may employ hands at fixed compensations, rent, lease or buy teams, implements, tools and machinery, all kinds of motor power, and all things needful to carry on such road work: Provided, that the board may have such road work or any part of such work done by contract, under such regulations as the board may prescribe."

We do not think it can be said that the provisions of this statute will serve to divest the title to a bridge located within such special road district from the county court. We are persuaded to this view not only by reason of the fact that no specific provision to this effect appears within the statute itself, but also by reason of the provisions of Section 8534, which provides that on the first instance the county court of any county shall determine what bridges are to be built. This section reads as follows:

"Each county court shall determine what bridges shall be built and maintained at the expense of the county and what by the road districts: Provided, that no road district shall be compelled to build a bridge which costs fifty dollars or more."

Further, it is noted that all provisions for the acquisition of right of way for the construction of county roads and bridges are to be maintained in the name of the county and that conveyance of title to such right of ways are to run to the county court as trustees for the county. Further, it is noted that under the provision of Section 8706, R. S. Missouri, 1939, upon dissolution of a special road district of the nature of that hereunder consideration, no specific provision is made for the reversion of title to any of the title, whether tools, machinery, bridges, etc., to the county.

From the foregoing we are led to the belief that the intended purpose of the general road laws and specific statutes relating to special road districts disclose that title to all easements, bridges, etc., remain in the county and that in special roads districts the commissioners thereof are merely trustees with respect to such items. The powers exercised by such commissioners are declared by Section 8686, R. S. Missouri, 1939, to be merely the "rights, powers and authority conferred by general statute on road overseers." From this it cannot be said that such commissioners are invested with the title to such portion of the roads, bridges, etc., as may be under their jurisdiction.

Having reached this conclusion, it is unnecessary to pass upon the second question you have proposed.

CONCLUSION.

In the premises we are of the opinion that the title to a bridge erected out of county funds remains in the county court even though such bridge be located within the boundaries of a subsequently

Hon. John M. Cave

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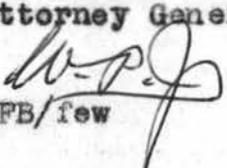
incorporated special road district; and that upon vacation of the county road, of which such bridge forms a part, the county court may dispose of such bridge in the same manner as any other county property. In other words, it may be disassembled and reassembled in a location which will serve the interests of the public in carrying traffic across streams or it may be disposed of for cash.

Respectfully submitted,

APPROVED:

WILL F. BERRY, JR.
Assistant Attorney General

J. E. TAYLOR
Attorney General


WFB/few