

SPECIAL ROAD DISTRICTS: Commissioners of special road district should continue to carry on business of district pending appeal from county court decision dissolving such district. County treasurer may honor warrants properly issued by commission pending such appeal.

JOHN M. DALTON
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August 4, 1953

John C. Johnsen
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Honorable Andrew J. Higgins
Prosecuting Attorney
Platte County
Platte City, Missouri

Dear Mr. Higgins:

This is in response to your request for an opinion dated June 18, 1953, which, omitting caption and signature, reads as follows:

"Mr. W. M. Couch, Treasurer of Platte County, requests the opinion of your office in the following situation:

"On June 1, 1953, the Western Benefit Special Road District of Platte County, Missouri, was dissolved under the provisions of Sections 233.290 to 233.315, R.S. Mo. 1949. Thereafter, the objectors to the dissolution filed their Appeal Bond and Notice of Appeal. Said appeal will in all probability not be heard until the September Term of Court, 1953.

"1. Pending the decision on the appeal, is there any authority in either the commissioners of the district or the trustee in dissolution, appointed by the County Court to carry on the business of the Special Road District?

"2. If either of the above have such authority, may the County Treasurer honor the warrants issued by either of the parties for labor, materials, and supplies?"

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You mention that the special road district in question was dissolved under the provisions of Sections 233.290 through 233.315, RSMo 1949. We express no opinion herein as to the constitutionality of provisions of those sections with regard to the disincorporation of special road districts.

Assuming the constitutionality of Sections 233.290 and 233.295, with regard to the dissolution of special road districts, we must consider as basic in the questions presented by you the effect of an appeal from the county court to the circuit court. The circuit court is vested with jurisdiction of appeals from the county court by virtue of Section 478.070, RSMo 1949, the applicable portion of which reads as follows:

"The circuit courts in the respective counties in which they may be held shall have power and jurisdiction as follows:

* * * * *

"(4) Appellate jurisdiction from the judgment and orders of county courts, probate courts and magistrates, in all cases not expressly prohibited by law, and shall possess a superintending control over them, and a general control over executors, administrators, guardians, curators, minors, idiots, lunatics and persons of unsound mind."

The fact that an appeal still lies from a finding of a county court to the circuit court by virtue of this section since the adoption of the Constitution of Missouri, 1945, was decided in *In re City of Kinloch*, 242 S.W. (2d) 59, 1.c. 64, wherein the court said:

"Section 478.070(4), R.S. 1949, formerly Section 2100, R.S. 1939, has been construed as applicable to and providing for appeals from county court judgments and orders in cases which partake in some respect of the characteristics of an action at law or in equity (Section 49.230, R.S. 1949, formerly Section 2490, R.S. 1939), and in which the circuit court can hear the evidence and from that enter up a judgment of its own. *State ex rel. Dietrich v. Daves*, 315 Mo. 701, 287 S.W. 430; *Bradford v. Phelps County*, 357 Mo. 830, 210 S.W. (2d)

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996; In re City of Uniondale, supra. We see no reason why the Sections should not continue to be available and implement an appeal from the determination of a county court in incorporating or disincorporating proceedings in so far as the determination calls for the exercise of duties judicial in nature."

The exact manner in which such appeals shall be taken from county courts to circuit courts, and the manner in which such cases shall be handled on appeal in the circuit court, is set forth in Section 49.230, RSMo 1949:

"In all cases of appeal from the final determination of any case in a county court, such appeal shall be prosecuted to the appellate court in the same manner as is now provided by law for the regulation of appeals from magistrates to circuit courts, and when any case shall be removed into a court of appellate jurisdiction by appeal from a county court, such appellate court shall thereupon be possessed of such cause, and shall proceed to hear and determine the same anew, and in the same manner as if such cause had originated in such appellate court, without regarding any error, defect or informality in the proceedings of the county court."

Sections 512.180 through 512.320, RSMo 1949, prescribe the manner in which appeals shall be taken from magistrate courts to circuit courts. We assume that the appeal in the case at hand was perfected according to the rules prescribed for appeals from magistrate courts.

In the case of State ex rel. McDermott Realty Co. v. McElhinney, 246 Mo. 44, 151 S.W. 457, the Supreme Court considered the effect of an appeal from the county court to the circuit court. The court said, Mo. l.c. 54:

" * * * On the other hand, either party is entitled to an appeal in a private road case, from any judgment or order of the county court not expressly prohibited by law (Sec. 3956, R.S. 1909; Colville v.

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Judy, 73 Mo. 651; State ex rel. v.

Wiethaupt, supra), and the effect of such an appeal (Sec. 4091, R.S. 1909) is that the 'appellate court shall thereupon be possessed of such cause, and shall proceed to hear and determine the same anew, and in the same manner as if such cause had originated in such appellate court, without regarding any error, defect or informality in the proceedings of the county court.'

* * * In appeals from inferior courts, where provision for an unrestricted trial de novo is made, it is well-recognized law that the judgment appealed from is vacated, * * *

The effect of that ruling and numerous other cases on the subject is to hold that, upon an appeal from the county court to the circuit court, the findings and rulings of the county court are nullified unless the appeal be dismissed. The cause is tried anew in the circuit court and the effect is the same as if the case had never been heard in the county court. That being so, it follows that in your case there has not as yet been any final order dissolving the special road district. The commissioners then are the persons still in the position of authority with respect to the special road district and should carry on the business of the district pending appeal as if no order had been issued by the county court.

Since there has been no final order dissolving the special road district, and since the commissioners exercise control and jurisdiction over the affairs of the district, the county treasurer may honor the warrants issued by the commission pending final decision of the case on appeal by virtue of Section 233.185, RSMo 1949, which says that: "All money paid to the county treasurer and placed to the credit of the district shall be paid out only on warrants signed by the president or vice-president and attested by the secretary, except as may be otherwise authorized by law."

CONCLUSION

It is the opinion of this office that, pending appeal from the decision of a county court dissolving a special road district, the commissioners of the special road district should continue

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to carry on the business of the district. It is the further opinion of this office that, pending appeal, the county treasurer may honor the warrants of the commission executed according to the provisions of Section 233.185, RSMo 1949.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. John W. English.

Yours very truly,

JOHN M. DALTON
Attorney General

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