

A supplementary opinion with authorities showing power of board of commissioners of ROAD DISTRICTS to levy and collect tax without a vote of the taxpayers. (not under township organization).  
Section 8067 R.S. Mo. 1929.

March 15, 1933



Honorable J. R. Gideon,  
Prosecuting Attorney  
Forsyth, Missouri

Dear Sir:

Since writing you an opinion on February 17, 1933, in answer to your letter of February 15th, asking for a construction of Section 8067 in which you ask:

"I would like to have your opinion as to whether the Commissioners of such road district have the right under the law without a vote of the taxpayers of said district to make and collect such taxes for general road work and for maintaining the road and bridges in such district."

I have received a letter from Mr. Lewis Luster, Attorney and Counselor, Springfield, Missouri, stating that he had received a copy of the opinion from you and taking issue on the law and conclusions contained in my letter to you.

As this desire for a construction of that section came through you as prosecuting attorney, I am writing to you regarding same and you in turn, if you wish, may furnish him with a copy of this letter (or secondary opinion).

The Constitution in Article X, Section 1, states:

"The taxing power may be exercised by the General Assembly for state purposes, and by counties and other municipal corporations, under authority granted to them by the General Assembly, for county and other corporate purposes.

Farther on in this same article of the Constitution of the State of Missouri, Section 23 says:

"In addition to taxes authorized to be levied for county purposes under and by virtue of Section 11, Article X of the Constitution of this State\*\*\*may\*\*\* levy\*\*\*a special tax not exceeding twenty-five cents on each \$100.00 valuation, to be used for road and bridge purposes but for no other purpose whatever\*\*\*"

Section 23, Article X, in addition to the foregoing says:

"When authorized so to do by a majority of the qualified voters of any road district, \*\*\* make a levy of not to exceed fifty cents on the \$100.00 valuation\*\*\*"

You will note that the taxing power may be exercised by the General Assembly of the state for state purposes and by counties and other municipal corporations when authorized by the General Assembly, such as Counties, Townships, Road Districts or other political subdivisions. (Sec. 8132 R. S. Mo. 1929)

More particularly Section 8061, R. S. Mo. 1929, which says:

"County courts of counties not under township organization may divide the territory of their respective counties into road districts, and every such district organized according to the provisions of this article shall be a body corporate and possess the usual powers of a public corporation for public purposes and shall be known and styled "\_\_\_\_\_ road district of \_\_\_\_\_ county, and in that name shall be capable of suing and being sued."

Section 8067 R. S. Mo. 1929 says:

"The board of commissioners of any district so incorporated shall have power to levy, for the construction and maintenance of bridges and culverts in the district, and working, repairing and dragging roads in the district, GENERAL TAXES on property taxable in the district\*\*\*\*\*"

See also Section 8132 R. S. Mo. 1929.

In *Harris v. Bond Company*, 244 Mo. 664, the Supreme Court says: (l.c. 688) and (l.c. 694-5)

"It is the concensus of opinion in this country that the Legislature in the creation of municipal and public corporations of every description is absolute and unlimited, in the absence of some specific State or Federal constitutional provision restricting such powers."

And the Court further states:

"These corporations are bodies politic; created by laws of the State for the purpose of administering the affairs of the incorporated territory."

One of the outstanding paragraphs in this decision is the following:

"THESE SPECIAL ROAD DISTRICTS ARE NEWLY BORN CITIZENS, DRESSED BY THE LEGISLATURE IN THEIR OWN GARBS, AND THEY POSSESS ONLY SUCH AUTHORITY AND RIGHTS AS ARE EXPRESSLY CONFERRED UPON THEM BY THE STATUTES OF THEIR CREATION."

This decision was rendered more than twenty years ago and in all the time since then, it seems to be the outstanding decision of the state as construed by the Supreme Court on these matters and has been followed and invariably favorably commented upon by about ten to fifteen Supreme Court decisions in this State as follows:

Embry v. Road District	257 Mo. (1) 623
Embry v. Road District	240 U.S. 250
State v. Wilson	265 Mo. (1) 13
State ex rel v. Burton	266 Mo. (1) 718
Pitman v. Drabelle	267 Mo. (1) 84
State ex rel. v. Burton	266 Mo. (3) 720
Wire Co. V. Wollbrinck	275 Mo. (1) 350
State ex rel Pope v. Mansfield	299 Mo. (2) 668
State ex rel Hales v. Walker	301 Mo. (2) 125
State ex rel v. Thompson	315 Mo. (2) 65
State ex rel v. Curtis	319 Mo. (1) 327
State ex rel. v. Lollis	326 Mo. 648

"The statute relating to the organization of drainage districts

is very similar to that providing for the organization of road districts. Drainage district statutes provide for benefit assessment and also, for general tax and are organized by LEGISLATIVE AUTHORITY as if DIRECTLY CREATED by the LEGISLATURE."

Citing 239 U. S. 254, l.c. 264

"It is apparent that when the district was duly organized it had the same footing as if it had been CREATED BY THE LEGISLATURE DIRECTLY."

In the Birmingham case, 274 Mo. l.c. 151, the Court said:

"These districts are public corporations which may only be constituted by legislative authority, exercised through an enactment of the General Assembly and put into effect either directly or by appropriate agencies designated by legislative authority\*\*\*"

In the decision of State ex rel. v. Thompson, 315 Mo. l.c. 66-67, it is said:

"This meets the requirements of our Constitution\*\*\* The Legislature itself defined and marked out the kind of a territory that may be organized into a road district, and the county court as an administrative agent of the Legislature put the Legislative will into effect\*\*\* While the proceeding is initiated by persons affected by the organization, the district is created by the Legislature through its appropriate agency. The district when organized is a municipal corporation\*\*\*\* It is a political subdivision of the State."

The decision further states:

"A road district being a municipal corporation, has power to levy general taxes upon property within its boundaries, for purposes of the district.\*\*\* The road district here was a legislative creation\*\* because our Legislature has prescribed a definite method and kind of territory in which a district can be organized; and because the district was put into operation

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and effect by the proper administrative agencies of the Legislature."

"The road district in this case is in a broad sense a municipal a political sub-division 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 it is disorganized by legislative act."

In State ex rel v. Lollis, 326 Mo. 644, Section 48, the court said:

"The Legislature may enact any law which does not contravene the State or Federal Constitution and in its interpretation the court will hold it valid unless its unconstitutionality is manifest and exists beyond a reasonable doubt.

State ex rel. v. Burton, 366 Mo. 718.

State v. Buente, 356 Mo. 227.

A State statute will not be held to violate the Constitution if any other RATIONAL interpretation or construction can be given it.

Pitman v. Drabelle, 367 Mo. l.c. 84.

Under the above citations, from the Constitution and authorities, it will be seen that these Commissioners of road districts (as empowered under Section 8067) have the power to levy and collect general taxes.

These laws and this section have come into the limelight under the leading decision of Harris v. Bond Company, 244 Mo. 685, wherein the Legislature clothed these new "born Citizens" in appropriate power, etc., and this decision having been repeatedly followed, (always favorably commented upon) in the ten or fifteen later decisions of our Supreme Court above cited, it would stand to reason that this ruling should govern and we reaffirm our opinion expressed to you in our letter of February 17, 1933.

Yours very truly,

  
Geo. B. Strother  
Assistant Attorney General

APPROVED

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Attorney General