

ROAD DISTRICT COMMISSIONERS: Have no right to employ themselves.  
Sections 8031, 8033 and 8038 RSMo 1929.

February 11, 1933.

Filed: #38



Hon. T. J. Harper  
Prosecuting Attorney  
Stone County  
Galena, Missouri

Dear Mr. Harper:

Your recent letter directed to the Attorney General, in which you request an opinion relative to the statutory provisions relating to commissioners of special road district, has been handed the undersigned for attention. In connection therewith you state the following:

"We have a question up before the County Court, in which the commissioners in Special Road districts are interested, on which I would like very much to have an opinion from your office.

Under section, 8031, "Said board shall serve without compension, but actual expenses shall be repaid them, &&&. but the real question is can they when out overseeing the road work or a bunch of men, or at work running tractor or grader or like work, at actual labor draw pay for actual labor done and performed. Now it seems that under section 8033 and 8038, Powers of the Board, are authorized to do and perform all acts within the district for which any authority is given to road overseers under the general road law of the State, I may be wrong, but I hold they should be paid for such labor, but no salary as commissioners."

As we understand your inquiry:- A board of commissioners of a special road district was appointed under the provision of Section 8026 R. S. Mo. 1929, who under the provision of Section 8031 R. S. Mo. 1929, were to serve without pay, except for their actual necessary expenses. Are they, or either of

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them, while holding the office of commissioner, entitled to work upon the road in some capacity and draw compensation therefor the same as a road overseer, and at the same time draw the expenses as provided for the board of commissioners, or would they be permitted to draw the road overseer's salary and forego the expenses as so provided?

The adjudged cases upon the validity of appointment to office, made from the membership of the appointing board, hold uniformly that such appointments are illegal, as against public policy and for that reason are generally discountenanced. The reason for declaring such act against public policy is obviously from the fact that the power to fix and regulate the duties and compensation of the appointee, is lodged in the body of which the commissioner is a member. Unless such rule was promulgated and enforced, it might permit the general public to be taken advantage of by the board or commission created as their agent and for their protection.

It is of the highest importance that municipal and other bodies of public servants should be free from every kind of personal influence.

State ex rel, Smith v. Bowman, 184 Appeal 549.

For the reasons as hereinabove stated, it is the opinion of this department that it would be unlawful as against public policy for the member of your special road district board to be employed by the board, or engage themselves as an employee, and draw compensation for working upon the highway of the road district, in which he is serving as commissioner.

Yours very truly,

CARL C. ABINGTON  
Assistant General Attorney

Approved: ROY MCKITTRICK