

OPINION: SPECIAL ROAD COMMISSIONERS:

County Court without authority to elect commissioners, after City in District has ceased to exist as such.

February 14, 1934. 2-17-34

Honorable Robert W. Hawkins
Prosecuting Attorney
Pemiscot County
Caruthersville, Missouri.



Dear Sir:

We have your request of January 26, 1934, for an opinion concerning Article 9, Chapter 43, R. S. Missouri, 1929, and election of Commissioners for Special Road District. Your request is as follows:

"For the past four or five years the City of Bragg City has ceased to function as a municipality, that is, it has ceased to elect a mayor and has ceased to elect any other city officials, and at the present time has no one acting as mayor or members of the board of aldermen.

"The question now arises: How are the Commissioners of Bragg City Special Road District to be elected? You will observe Section 8026 says that the members of the county court, together with the mayor and members of the city council of the city shall meet and elect the commissioners. The county court now takes the position that since there is no city council in Bragg City that the county court is without power to appoint these commissioners.

"There are several thousand dollars of bonded indebtedness owing by Bragg City Special Road District. It is therefore very necessary that its functions be continued by the election of commissioners."

It appears that the road commissioners elected by the mayor and council of Bragg City and the County Court hold office until their successors are elected and qualified under the provisions of Section 8026 R. S. Mo. 1929.

A mayor and councilman of a city each has one vote in the election of road commissioners. State ex inf. v. Meyer, 12 S. W. (2d) 489. Since the county court is composed of three members, the mayor and city councilman as a general rule constitute a majority of the electing tribunal which elect the road commissioners under and by virtue of the provisions of Section 8026, supra.

The road district over which the road commissioners exercise their authority is composed of territory which includes the city, town or village of less than 100,000 inhabitants. This requirement is found in Section 8024, R. S. Mo. 1929.

We find no authority transferring the power of the mayor and city council to the county court upon the termination of the offices of Mayor and Council.

It is therefore the opinion of this office that the county court is without authority to elect road commissioners. Those already in office, as heretofore pointed out, hold office until their successors are elected and qualified. Under this provision of the law, there can be no vacancy in the office of road commissioner and it is now well settled that a term of office which runs for a specified time and then "until the successor is elected and qualified" is a valid provision. State ex rel. Robinson, 38 Mo. 193; State ex inf. Crow v. Smith, 152 Mo. 513; State ex rel. v. Boecker, 56 Mo. 17; State ex rel. v. Blakemore, 104 Mo. 340.

Insofar as the outstanding bonds are concerned, road commissioners are not necessary for the payment of either principal or interest on those bonds since a complete scheme for the payment of such bonds, even after the termination of a special road district, has been

Hon. Robt. W. Hawkins

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provided in Section 8058, R. S. No. 1929.

Respectfully submitted,

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APPROVED:

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Attorney-General.

FER/J