

SPECIAL ROAD DISTRICTS:

Road Commissioner in a Special Road District cannot work on the roads in his district and draw compensation therefor. Special road districts are political subdivisions of the State with reference to the Nepotism Amendment.

September 17, 1934.



Honorable Arch M. Skelton
Prosecuting Attorney
Lafayette County
Lexington, Missouri

Dear Sir:

This department is in receipt of your letter of August 25, 1934, wherein you state as follows:

"I have had several complaints from persons in different parts of Lafayette County with reference to Road Commissioners in Special Road Districts of the county working on the roads and drawing compensation therefor. They are also hiring their sons and members of their families. I hate to bother you for an opinion at any time but it seems that it is necessary that I now do so. I would like your opinion upon the following questions as soon as possible:

First: Can a road commissioner in a special road district work on the roads in his district and draw compensation therefor?

Second: Is a special road district considered a political subdivision of the state with reference to nepotism amendment?"

I.

**ROAD COMMISSIONER CANNOT
DRAW COMPENSATION FROM DIS-
TRICT.**

Section 8076 R. S. Mo. 1929, provides in part as follows:

" * * * Said commissioners may advertise for bids for such contract in any manner they may choose; and the contract shall in no case be let to any commissioner, nor shall any commissioner, directly or indirectly, have any pecuniary interest therein other than the performance of his official duties as herein required." * * * "

Section 8078 supra, sets out the policy and intention of the legislature to keep the commissioners disinterested directly or indirectly in the letting of road contracts and from having any pecuniary interest therein.

Section 8079, R. S. Mo. 1929, provides for the compensation of commissioners and reads in part as follows:

" * * * Commissioners of road districts incorporated under this article shall receive no compensation for their services, but shall be paid any and all expenses they may incur in transacting business of the district including reasonable attorney's fees." * * * "

Section 8079 supra, limits the compensation of the commissioners of road districts to expenses incurred in the transacting of the business of the district and to reasonable attorney's fees and provides specifically that they shall receive no compensation for their services.

In view of the above two sections, we are clearly of the opinion that a commissioner for a special road district cannot work on the roads in his district and draw compensation for his services. To hold otherwise would be contrary to the intention of the Legislature, which was to have the commissioners, an impartial body, interested only in faithfully, honestly and impartially discharging their duties as commissioners according to law.

II.

COMMISSIONERS OF ROAD DISTRICT SUBJECT TO SECTION 13 ARTICLE XIV CONSTITUTION OF MISSOURI.

Article XIV, Section 13 of the Constitution of Missouri provides as follows:

"Any public officer or employee of this State or any political subdivision thereof who shall, by virtue of said office or employment, have the right to name or appoint any person to render service to the state or to any political subdivision thereof, and who shall name or appoint to such service any relative within the fourth degree, either by consanguinity or affinity, shall thereby forfeit his or her office or employment."

The above section applies to any public officer or employee of this state or of any political subdivision thereof who has, by virtue of his office or employment, a right to name or appoint a person to render service to the State or to any political subdivision thereof.

Section 8062 R. S. Mo. 1929, dealing with special road districts declares that the same are political subdivisions and reads in part as follows:

"* * * Whenever an order is so made incorporating a public road district such district shall thereupon become, by the name mentioned in such order, a political subdivision of the state for governmental purposes with all the powers mentioned in this section and such others as may be conferred by law.* * *"

Our Supreme Court in the recent case of State ex rel. vs. Special Road District, 6 S. W. 594, has stated that such is the case, l. c. 596:

"The special road district contemplated by article 8, c. 98, R. S. 1919, is 'a political subdivision of the state for governmental purposes'---a municipal corporation. Section 10834. It is brought into existence through the exercise of legislative power.* * *"

Without question, the Commissioners of the road district are public officers. Embree v. Road District, 257 Mo. 593, l. c. 623:

"Under these statutes all such road districts are public corporations, organized under the unquestioned authority of the Legislature. (Harris v. Bond Co., 244 Mo. 664.)"

And as was held in that case, the commissioners appointed or elected in the manner provided for by section 10613 are public officers for the purposes mentioned in said article 7. * * * *

While we are not unmindful of the fact that road districts, levee districts, school districts and other public or municipal corporations have not been held to be "other political subdivisions of the State" as used in Section 12 of Article VI of the Constitution of Missouri, ~~expecting~~ the jurisdiction of the Supreme Court of this State, it is our firm belief that such cases have no bearing upon the term "political subdivision" as used in the phrase "of any political subdivision thereof" as contained in Section 13 of Article XIV of the Constitution respecting the practice of nepotism.

The cases respecting the jurisdiction of the Supreme Court are all bottomed on the proposition that the phrase "or other political subdivision of the State" used in Section 12 of Article VI following the word "county" mean such political subdivisions as having power similar to those of a county. On the other hand, in Section 13 of Article XIV the phrase used is "any public officer or employee of this State or of any political subdivision thereof." * * * These terms are simple but comprehensive and were undoubtedly used to cover every possible situation wherein the evil existed which was sought to be remedied. Such has been the decision of our Supreme Court in the case of State ex rel. McKittrick vs. Whittle 63 S. W. (2) 100. In this case the Respondent was a director in a school district and had voted for the employment of a teacher in the school who was related to him within the prohibited degree. Concerning the evil to be remedied the Court stated, l. c. 101:

"It is a matter of common knowledge that at the time of the Constitutional convention in 1922-1923, and for a long time prior thereto, many officials appointed relatives to positions and thereby placed the names of said relatives upon the public pay rolls. The power was abused by individual officials and by members of official boards, bureaus, commissions, and committees, with whom was lodged the power to appoint persons to official positions. It also was abused by officials with whom was lodged the power to appoint persons to official positions, subject to the approval of courts and other functionaries of the state and its political subdivisions."

And after distinguishing between the term "other political subdivisions of the State" as used in Section 12 of Article VI, and "any political subdivision thereof" as contained in Section 13 of Article XIV, the Court held, l. c. 102:

"Thus it appears that a school district is a political subdivision of the state within the meaning of section 13, art. 14 of the Constitution."

Our Supreme Court has placed a liberal construction upon the nepotism amendment and there can be no distinction between its application to school districts and its application to road districts. As has often been said, relating to a statute, which seems equally applicable to the construction of this constitutional provision:

"It is a golden rule of judicial exposition to discern what the common law was, what was the mischief and defect for which the common law did not provide, what remedy the statute appointed to cure the disease of the commonwealth and what was the reason of the remedy so provided. When these things are discerned by the judge, it is but trite and venerable doctrine that his office is to so construe the new statute as to suppress the mischief, advance the remedy and 'to suppress subtle inventions and evasions for continuance of the mischief,...and to add force and life to the cure and remedy according to the true intent of the makers of the act, pro bono publico.' (Heydon's Case, 3 Coke, 7b.)"

The foregoing is an excerpt from the opinion of Judge Lamb in the case of Shohoney vs. Railroad, 231 Mo. 131, l. c. 157.

CONCLUSION.

It is therefore the opinion of this office that a road commissioner is entitled to no compensation for service rendered the district because of the provisions of Sections 8078 and 8079 R. S. Mo.

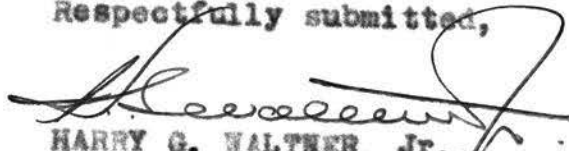
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1929, and that such commissioners are public officers of political subdivisions of the State of Missouri, and are subject to the provisions of Section 13 of Article XIV of the Constitution of the State of Missouri.

Respectfully submitted,



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APPROVED:

ROY McKITTRICK,
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HGW:MM