

SPECIAL ROAD DISTRICTS

Where Special Road District
in grading a road damages
culvert driveway in front of
farm home, said district
is not liable for said damage.

1-22
January 2nd,
1934



Mr. J. Olin Taylor,
County Clerk,
Hermitage, Missouri.

Dear Mr. Taylor:

We have your letter of October 11, 1933 in which was contained a request for an opinion as follows:

"In view of the fact that a County road has been established, and a culvert sufficient for reasonable traffic placed in front of a Farm Home and that a special road district while grading said road removes said culvert, and that said culvert after the road is graded is not sufficient for driveway at this place. Who's duty is it to furnish material for new culvert, Road District or individual who uses it as entrance to home."

Nowhere in our statutes is there any provision covering the above situation. In addition the courts of this state have never passed on the respective rights of parties under these given facts. In view of the foregoing, therefore, in order to render a sound opinion we must first enter the field of construction and analogy. In short, we feel our opinion should be based on an application of the principles of negligence under the circumstances. We assume that the grading by the Special Road District in such a way as to destroy or render useless the culvert in question was the result of unintentional negligence on the part of such Special Road District. It is then only necessary to decide whether the Special Road District is to be held responsible for such unintentional negligence.

Special Road Districts in Hickory County are governed by Chapter 42, Article 9, Revised Statutes of Missouri 1929.

Section 8033, Chapter 42, Article 9 Revised Statutes of Missouri provides as follows:

"Sec. 8033. Board's powers and duties. Said board shall have sole, exclusive and entire control and jurisdiction over all public highways within its district outside the corporate limits of any city or village therein to construct, improve and repair such highways, and shall remove all obstructions from such highways, and for the discharge of these duties shall have all the power, rights

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and authority conferred by general statutes upon road overseers, and said board shall at all times keep the public roads under its charge in as good repair as the means at its command will permit, and for this purpose may employ hands at fixed compensations, rent, lease or buy teams, implements, tools and machinery, all kinds of motor power, and all things needful to carry on such road work: Provided, that the board may have such road work or any part of such work done by contract, under such regulations as the board may prescribe."

It will be seen that the above section, among other things, confers on the Board of Commissioners the same power, rights and authority as is conferred by general statutes on road overseers. In other words, said board stands in the same relation in this respect to the public as does the road overseer, and a case deciding the rights and liabilities of road overseers as to their acts is applicable to the rights and liabilities of the board under similar circumstances.

In view of the foregoing, therefore, the case of Cook vs. Hecht, 64 Mo.A 273 is most applicable to the situation at hand. Briefly the facts in that often cited case are in essence the same as here. Plaintiff owned a farm abutting on the road with ready and easy access to said road. The road overseer in improving the road, cut a drainage ditch between plaintiff's property and the road, thereby as in our case materially damaging plaintiff's access to said road. The court at page 279 stated the rule, which subsequent decisions have approved, as follows:

"These road overseers are statutory officers, clothed with certain discretionary powers. It is made their duty to exercise proper diligence in keeping the roads in good repair (Revised Statutes, 1889, section 7808), and as to how this shall be done is necessarily left to their judgment. They come, then, within the scope of the rule, well established, that public officers, vested with discretionary powers in the performance of certain duties, cannot be held individually liable for their acts, unless willfully, maliciously and oppressively exercised. Reed v. Conway, 20 Mo. 22; Edwards v. Ferguson, 73 Mo. 686. They can not be individually held for mere mistakes in judgment. They are not liable so long as they honestly and in good faith perform the work intrusted to them. The injury must be maliciously and willfully committed; and by willful, says Judge Ryland in Reed v. Conway, supra, is meant 'contrary to a man's own conviction.'

It may be, now, that this defendant did not pursue the best mode of improving the road at the point in question; it may have been better to have carried the water across the road by a culvert, rather than to lead it down in front

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of plaintiff's premises, though numerous witnesses seem to have approved his conduct as the part of wisdom. But, however, this may be, he is not responsible for such mistaken judgment. He was there on the highway in question, representing the public, which had acquired the right of way, 'with the powers and privileges incident to that right, such as digging the soil, using the timber and other materials found within the limits of the road, in a reasonable manner, for the purposes of making the road,' etc. Wash. on Eas. & Serv. (3 Ed) p. 228; Pemberton v. Dooley, 43 Mo. App. 176.

We discover no evidence in this record that can justify the charge that defendant acted in a malicious and willfully oppressive manner in repairing the road in question. We think there is no merit in the plaintiff's case and the judgment, which was for the defendant, will be affirmed. All concur."

And again in the case of Sharp vs. Kurth, 245 S. W. 636, the court at page 638 stated as follows:

"Absent legislation making special road districts liable for its negligent acts, it is established by a wealth of authority in Missouri that such districts are public corporations and are quasi political subdivisions of the county and the state and are not liable for negligence in the building and construction of public works, such as roads and bridges. Lamar v. Bolivar Special Road District (Mo. Supp) 201 S.W. 890, and cases therein cited. A like ruling was recently made by this court in reference to the liability of a drainage district under our law. D'Arcourt et al v. Little River Drainage District (No. 17,395) 245 S.W. 394, and Hausgen v. Elsberry Drainage District (No. 17365) 245 S.W. 401, not yet (officially) reported.

(2) It is likewise clear that the individual defendants, being special commissioners of the road district, are not liable for their mistakes of judgment or their acts of negligence in doing work."

Further authority along the same line may be found in 29 Corpus Juris, Section 302, page 576 and 52 L.R.A. (N.S.) 145 (note.)

This being so and there being no statutory authority on which to base a responsibility on the part of the road district, under the circumstances, we are constrained to hold that the individual in question must furnish material for the new culvert.

Very truly yours,

APPROVED: _____
Attorney-General

CHARLES M. HOWELL, Jr.
Assistant Attorney-General