

ROADS AND BRIDGES - Right of commissioners of special road districts incorporated under Article 10, Chapter 42, R. S. Missouri, 1929, to receive compensation as road overseers.

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January 26, 1935.

Hon. Elliott M. Dampf,  
Prosecuting Attorney,  
Cole County,  
Jefferson City, Mo.

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Dear Sir:

A request for an opinion has been received from you under date of January 3, 1935, such request being in the following terms:

"Will you kindly give me your opinion as to whether road commissioners of Special Road Districts - Benefit Assessments in Counties not under Township Organization, organized under Section 8061, Revised Statutes of Missouri, 1929, may receive pay for acting as Road Overseers, under Section 8065, Revised Statutes of Missouri, 1929 or if they are prohibited from receiving pay due to being elected as Commissioners."

As we understand your question, it is whether because such commissioners of special road districts organized under Article 10 of Chapter 42 of the 1929 statutes are by Section 8065 thereof given "all the power, rights and authority conferred by law upon road overseers," they are therefore to receive the compensation authorized by law to be paid to road overseers.

That part of Section 8065 above quoted means, in our opinion, that while such commissioners have all the powers of road overseers, they exercise these powers as commissioners, and that they do not exercise them as overseers, i.e. when persons are designated commissioners of special road districts under that Article, they do not, because they are given by Section 8065 the powers of road overseers, hold two separate offices, and do some acts as commissioners and some acts as road overseers, but everything they do is as commissioners, including the exercise of powers and the performance of duties identical to those conferred and imposed by law on road overseers. Nor would it seem to us proper that a person who has been selected as a commissioner should be designated and appointed by the county court as a road overseer, because such commissioner having all the powers of a road overseer by virtue of his office as commissioner, to des-

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ignate him also an overseer would give him no new powers. Our construction of Section 8065 is borne out by Section 7870, relating to the appointment, qualification and compensation of road overseers, which allows them to receive compensation "for each day actually and necessarily employed as such overseer", and there would be no necessity for employing a person as overseer who had by virtue of his office as commissioner all the powers that could be conferred on him as an overseer. Thus, a commissioner under Article 10 performs all his services in connection with roads as commissioner, and the law provides that he shall receive no compensation for those services.

Section 8079 fixes the compensation of commissioners under such Article 10, providing therefor 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."

The fact that commissioners of special road districts incorporated under Article 10 of Chapter 42 are given all the powers conferred by law on road overseers (compare also Sections 8065 and 7876) indicates, and the complete absence of any provision for overseers for districts incorporated under Article 10 confirms the indication, that in road districts incorporated under Article 10 no road overseers are contemplated, and, therefore, the provisions for the compensation of road overseers, contained in Article 3 of Chapter 42 (Section 7870) are inapplicable to districts incorporated under Article 10. Any other conclusion would mean that there might be both commissioners and overseers in one district who would have almost identical powers, and this conflict and duplication of duties would cause great confusion. Not only would expediency and harmony between the various articles of Chapter 42 be served by the construction that we make, but also certain language in Article 10 shows that apparently this construction was in the minds of the General Assembly when it enacted Article 10. Thus, in Section 8066 it is provided that the Commissioners of special road districts incorporated under Article 10 shall, with respect to the poll tax, "perform the duties, \* \* \* that are imposed by law upon road overseers \* \* \* in road districts that are not incorporated;", showing that apparently one scheme was envisaged for unincorporated road districts, and another for those incorporated under Article 10, in the former of which road overseers were to be responsible for road matters and in the latter of which the special commissioners were to be so responsible.

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In conclusion it is our opinion that road overseers of special road districts incorporated under Article 10 of Chapter 42, R. S. Missouri, 1929, are not road overseers ex-officio, could not properly be appointed to serve as road overseers while holding the office of commissioner, and could not legally be entitled to the compensation authorized by law for road overseers.

Very truly yours,

EDWARD H. MILLER  
Assistant Attorney General

APPROVED:

ROY McHITTRICK  
Attorney General