

ROADS AND BRIDGES:

Commissioners of special road districts cannot act as road overseers and draw pay for the same in a special road district.

6-19

June 18, 1935



Honorable G. Logan Marr  
Prosecuting Attorney  
Morgan County  
Versailles, Missouri

Dear Sir:

This Department is in receipt of your letter of June 8, wherein you make a request for interpretations of certain sections of the Revised Statutes of 1929. Your letter is as follows:

"Under section 8024 of the 1929, we have a road district organized. In that special road district there are several work relief, federal projects in operation. Several of the road commissioners are supervising the work in person, and are charging out of the allotted funds of the district, so much per day as road overseer for the supervision. This constitutes a considerable drain on the available funds for actual work. It would seem that for this day to day labor the commissioners of the special district would not be entitled to this kind of compensation.

Please send me as soon as possible an interpretation of section 8031 of the 1929 statutes, as to whether the commissioners can supervise the actual building of roads and draw pay thereon as road overseers?"

June 18, 1935

The commissioners of a special road district are appointed and must possess certain qualifications under Section 8026 Revised Statutes Missouri 1929, which is as follows:

"The mayor and members of the city council of any city or town within any special road district thus organized, together with the members of the county court of the county in which said district is located, at a meeting to be held in the county court room, at which meeting the presiding judge of the county court shall preside and the county clerk shall act as clerk, within two weeks after the voters within the territory of such proposed district shall adopt the provisions of this article, shall, by order of record to be kept by the county clerk, appoint a board of commissioners composed of three persons, designating one to serve for three years, one for two years and one for one year, and in February every year thereafter one commissioner shall be appointed as above specified, to serve for three years; all such commissioners shall be resident taxpayers of the district, and shall serve until their successors are appointed and qualified, vacancies to be filled as original appointments are made. Resignations shall be to the county clerk. Removal from the district shall create a vacancy. Such commissioners, before entering upon the discharge of their duties, shall take oath of office, to be administered by the clerk of the county court: Provided, that where the city is located a greater distance than ten miles from the meeting place of the county court, the mayor and city council of the city or town, within the road district for which commissioners are to be appointed, may make a written certificate of their choice of the commissioner or commissioners to be

appointed, designating their first, second and third choice and seal the same and transmit it to the county clerk by mail or by special messenger and the choice and selection designated in such certificate shall be given the same consideration as though the board and mayor were present at the meeting of the court: Provided, that such certificate shall be given over the signature of the mayor or acting mayor attested by the seal of the city and signature of the city clerk."

Under Section 8031 Revised Statutes Missouri 1929 the commissioners receive no per diem compensation, but necessary expenses,

"Said board shall serve without compensation, but actual, necessary expenses, actually paid, shall be repaid to them."

We shall next discuss the question of road commissioners acting as overseers and supervising construction of the road in the special district, and determine whether or not there is any prohibition against said commissioners drawing a sum per diem.

Section 4091 Revised Statutes Missouri 1929 refers to members of commissions embezzling money. The pertinent part is as follows:

"If any member of any town or city council, or of any county court or commission or body charged with the administration or management of the affairs of any county, or any executive officer or member of any executive department of any city, town or county in this state, or any member of any board or commission

charged with the administration or management of any charity or fund of a public nature, by whatever name the same may be called, shall knowingly and without authority of law vote for the appropriation, disposition or disbursement of any money or property belonging to any such city, town, county, charity or fund, or any subdivision of any such city, town or county, to any use or purpose other than the specific use or purpose for which the same was devised, appropriated and collected, or authorized to be collected by law, or shall knowingly aid, advise or promote the appropriation, disbursement or disposition of any such money or property, for any purpose not directed and warranted by law, and such illegal appropriation, disbursement or disposition be in fact effected, every person so offending against the provisions of this section shall be deemed and taken to have feloniously embezzled and converted to his own use such money or property; \* \* \*

It cannot be said that the commissioners in the instant case are guilty of unlawfully embezzling any funds, but we quote the section for the purpose of differentiating between the terms of said section and Section 8076 Revised Statutes Missouri 1929, which is as follows:

"Whenever an order for improvement is made, the commissioners of the district shall, in the name of the district, enter into a written contract with the lowest and best bidder for making such improvement in compliance with such order. Such contract shall require that the work be completed within a certain time, and shall provide a penalty for each day beyond said time said work remains uncompleted, and said commissioners shall require said contractor to enter into a bond, to be approved by the commissioners, for the full performance of said contract, and payment for

all labor and material used or employed in the performance of such contract. 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.\* \* \* \*

Having the terms of the two sections in mind the Supreme Court of Missouri, in the case of State v. Holder 72 S. W. (2nd) 1. c. 490, said:

"The purpose of the statute section 4091 seems to us to be plain. By it the Legislature has made it a felony for any officer, coming within its provisions, to appropriate, dispose of, or disburse funds for any use or purpose other than the specific use or purpose for which the same was devised, etc. The information in this case specifically charges that respondent was a commissioner of a special road district; that he aided and promoted the payment of \$51.50 to himself for work and labor he had performed in repair and construction work on the roads of the district of which he (respondent) was a commissioner. It was not charged that respondent did not perform the labor for which the claim was allowed or that the district did not receive full value therefor. The primary purpose for which money of a special road district is to be expended is for the up-keep of the roads of the district. The money was, therefore, appropriated and expended for the specific use intended by the law. In other words, the facts alleged in the information disclose, without doubt, that the funds were not diverted from their proper channel. The diversion of funds was the evil sought to be remedied by the section in question.

Sections 8031 and 8079, R. S. Mo. 1929 (Mo. St. Ann. Secs. 8031, 8079, pp. 6839, 6873), pro-

vide that commissioners of road districts must serve without compensation. These sections have reference to the duties of road commissioners in their official capacity and do not refer to labor performed in repairing the roads of the district. Section 8076, R.S.1929 (Mo.St. Ann. Sec. 8076, p. 6872), provides that contracts let for road work '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.'

The information does not allege under what article of the statute the special road district mentioned was organized. But, if we assume for the sake of argument that it was organized under article 10, chapter 42, which article contains section 8076, and if we further assume that respondent violated the provision quoted, he would not be guilty of violating section 4091, supra. The latter section does not in plain terms, or even by implication, declare the acts charged by the information to constitute a felony. It is the disbursement of money or property belonging to the district 'to any use or purpose other than the specific use or purpose for which the same was devised' that is made a criminal offense. As said before, the facts alleged in the information disclose that the money was disbursed for the specific use for which it was collected. The payment of the money, if it was unlawful, was not unlawful because it was disbursed for a purpose other than that for which it was intended, but because respondent was a commissioner of the district and could not contract with himself. The section in question does not cover that situation, and therefore the trial court was right in sustaining the demurrer to the first three counts of the information. \* \* \* \* \*

The above decision, it will be noted, was based upon a prosecution under Section 4091, and the court sustained the demurrer thereto holding that if the defendant

Honorable G. Logan Marr

-7-

June 18, 1935

was guilty of any crime and the facts in the above decision are almost identical with the facts you present in your letter he was guilty of violating the terms of Section 8076, quoted supra.

CONCLUSION

We are of the opinion that, under Section 8076 and the decision above, the commissioners cannot legally draw per diem wages for supervising or overseeing the building of roads in special road districts. Their compensation is fixed by Section 8031, quoted supra, and they are entitled only to the actual necessary expenses.

Respectfully submitted,

OLLIVER W. NOLAN  
Assistant Attorney General

APPROVED:

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JOHN W. HOFFMAN, Jr.  
(Acting) Attorney General

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