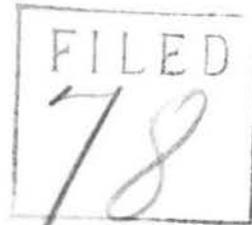


SPECIAL ROAD DISTRICTS: Refund by State Highway Commission.

8-20

August 13, 1935



Mr. Daniel C. Rogers,  
Attorney at Law,  
Fayette, Missouri.

Dear Sir:

We wish to acknowledge your letter of recent date requesting an opinion wherein you state in part as follows:

"About 1920 or 1921, different people (most of them living along the road mentioned) contributed a total of about \$6,200.00 for the construction of a mile of highway leading northward out of Fayette towards Glasgow. This is now the first mile of highway out of Fayette on No. 5 highway. There is some conflict of evidence with reference to whether the State Highway engineer on the job, and the members of the commission of the Special Road District (all of whom are now dead) promised the donors that this money would be given back to them individually in the event it was ever refunded to the Fayette Special Road District.

"Since that time the refund law has passed, and the Special Road District commissioners, whom I represent, have convinced the State Highway Commission that this \$6,200.00 should be refunded to the Special Road District. It took some time to show from the incomplete records that were kept in 1920 that this sum of money was officially paid by the Special Road District to the

State Highway Commission. But we finally made our case. Thereupon the State Highway Department ordered the refund and issued its check for \$6,200.00. During the time of the application for the refund the individuals who are the true original contributors or who are legally entitled to receive moneys from deceased contributors protested paying the money to anyone except themselves individually. In due time, after they learned that the Highway Commission would not make a refund to individuals, they withdrew their objections. Thereafter our case was completed and the above check issued to the Fayette Special Road District.

"Although these donors of this money have not one bit of writing that it was the promise or understanding that this money should be paid to them individually, they are pressing the Commissioners of the Fayette Special Road District to refund to them the amounts which each of them contributed. Certainly there was no written contract to that effect. And in fact, there was no writing of any kind that it was the intention that the money if refunded should go back to the people who contributed it. Furthermore, I do not believe the individuals can make a very strong case of competent evidence that there was any legal promise to return the money to them.

"But assuming that at the time they paid their money into the hands of the Committee that received it and delivered it to the Special Road District for payment to the contractor there was an oral promise or understanding in each and every case that if the money should ever be refunded by the State Highway Department, would the Special Road District now be liable for return of the money to each

individual? Some threaten to bring suit to force the Special Road District to make payment to the individuals. The Commissioners are willing to pay it back to the individuals if it is legal to do so, and if under the law they would be liable to an adverse judgment in a suit brought by the individuals to collect their respective individual shares. But on the other hand the Commissioners do not want to dish out \$6,200.00 to individuals unless it is legal to do so. Please give us your opinion as to whether or not the Special Road District would be liable for refund of this money to the individuals under these circumstances."

The question that first presents itself is, assuming an oral agreement or understanding that the respective donors would be given their money back in the event it was ever refunded to the Fayette Special Road District, does the statute of frauds apply?

Section 2967, R. S. No. 1929, sets out what agreements must be in writing and provides in part as follows:

"No action shall be brought \* \* \* upon any agreement that is not to be performed within one year from the making thereof, unless the agreement upon which the action shall be brought, or some memorandum or note thereof, shall be in writing and signed by the party to be charged therewith, or some other person by him thereto lawfully authorized."

Our court in the case of See v. See, 237 S. W. (Mo.) 795, 1. c. 799, in construing the above section, said:

"Appellant claims the original oral contract was within the statute of frauds and therefore is no defense.

There are many reasons why this point is not well taken, one or two of which may be mentioned. Even if this were construed as a contract for rental for the term of the plaintiff's life, it would not be within the statute of frauds because it might be performed within a year. The statute of frauds, section 2169, R. S. 1919, applies only to contracts which by their terms cannot be performed within a year. *Wynn v. Followill*, 98 Mo. App. 463, 72 S. W. 140; *Mathews v. Wallace*, 104 Mo. App. 96, 78 S. W. 296; *Suggett's Adm'r. v. Cason's Adm'r.*, 26 Mo. 221; *Green v. Whaley*, 271 Mo. loc. cit. 654, 197 S. W. 355."

From the facts presented us it is impossible to determine whether the contract might have been performed within a year. The oral agreement or understanding was made in 1920 or 1921, and the Laws of Missouri, Extra Session, 1933, page 164, shows that no provision was made for refunds until August 4, 1921. If it can be shown that it was made in 1921, it could have been performed within a year, and hence would not come within the statute of frauds, and this is true even though the contract might not have been made until sometime in August, 1920.

Assuming then for the basis of this opinion that the oral agreement could have been performed within a year, and hence that the statute of frauds does not apply, the next question that arises is whether the Fayette Special Road District could enter into such an agreement.

Special road districts, by virtue of the statutes of this state, are "capable of suing and being sued" and of "contracting and being contracted with" regardless of whether organized under Articles 9 or 10 of Chapter 42 as they relate to special road districts. (Sections 8025 and 8061, R. S. Mo. 1929.) In the instant case we see no reason why a contract of the nature herein set out could not be made under the above sections. If the future condition, viz., the refund of the moneys contributed, was forthcoming, the individual contributors were to have same returned to them. If no refund was made, no liability attached to the district to repay same.

Mr. Daniel C. Rogers

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August 13, 1935.

We have noted that special road districts are capable of suing and being sued, and hence if it can be established that the oral agreement does not come within the statute of frauds, we are of the opinion that the Fayette Special Road District, having received a refund of the aforementioned funds, must now, under the terms of the agreement, pay same over to the individual donors, and on refusal to comply makes itself subject to suit.

Yours very truly,

JOHN W. HOFFMAN, Jr.,  
Assistant Attorney General.

APPROVED:

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ROY McKITTRICK,  
Attorney General.

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