

HIGHWAYS--SPECIAL ROAD DISTRICTS: Commissioners of Special Road Districts, under Article IX, Chapter 42, have exclusive jurisdiction to build roads within the district.

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February 10, 1936.

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Mr. George E. Draper  
County Highway Engineer  
Newton County  
Neosho, Missouri

Dear Sir:

We acknowledge your request for an opinion dated January 24, 1936, which reads as follows:

"I am writing you for an expression of opinion relative to Special Road Districts. It looks like our statutes are not very clear on some of the provisions and would like to hear from you as soon as possible in regard to the following:-

"In Sec. 7874 page 2218 R. S. 1929 it appears that the Road Overseer is to keep the roads in his district in good repair as far as his funds permit - then it specifically states that he shall at all times conform to the plans, specifications and instructions of the County Highway Engineer.

"In Sec. 8033 page 2259 R. S. 1929 it seems to confer upon Special Road Districts a power limited to that of a road overseer - then in Sec. 8038 it again limits that power to that of a road overseer under the general road law - then again in Sec. 8052 it states that the general road law shall remain in full force and effect except wherein they conflict with other provisions.

"It does not seem to the writer that it was intended to place the tax money in the hands of a few commis-

sioners who would probably know nothing whatever about building a highway without placing some restraint on it to provide for efficiency.

"When a fellow goes out on a road and sees the taxpayers money being frittered away by employing men who would not know a needle beam from a gusset plate it naturally makes me wonder just what our road law means.

"Can the County Engineer make a special Road District conform to grade established by him so that a road will drain.

"Can he require them to submit plans and specifications to him before starting a road improvement and with the approval of the County Court--can that plan be changed to make it workable.

"Under the law the Special Road Districts are not required to build any bridge that costs over \$50.00 - with all the road money turned over to the Special - from what fund shall the County draw to pay the expense.

"Is the road district (Special) according to the foregoing citations, granted any other power, aside from the few not granted to a Road overseer, greater than a road overseer? If they are not granted any greater power than a road overseer in the matter of repair building and maintenance, do they come under the County Highway Engineer for instructions the same as a road overseer?"

From your letter it would seem that Newton County has a Special Road District organized under the provisions of Article IX, Chapter 42, R. S. Mo. 1929. You ask if such a Special Road District can build roads

without consulting the County Highway Engineer and complying with his specifications and restraints.

The County Highway Engineer is an employee of the County Court and is recognized as a county officer. See Section 8006, R. S. Mo. 1929.

Special Road Districts, organized under Article IX, Chapter 42, R. S. Mo. 1929, are political subdivisions of the State and have authority to build roads independent of similar authority vested in county officers. After providing for commissioners, as administrative officers of Special Road Districts, the Legislature gave them power as provided in Section 8033, R. S. Mo. 1929, which reads:

"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 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."

In the case of Harris v. Bond Company, 149 S. W. 603; 244 Mo. 664, l. c. 686, our Supreme Court held that Special Road Districts organized under Article IX, Chapter 42, R. S. Mo. 1929, are political cooperations, and as such have authority to issue bonds. The Court said in rendering its decision:

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"After the incorporation of a special road district, the statute provides for the appointment of a board of commissioners. The general power and authority of this board, as to the construction, maintenance and repairs of roads and highways, as declared by sec. 10585, Revised Statutes 1909, is 'sole, exclusive and entire control and jurisdiction over all public highways within its district outside the corporate limits of any city or village therein,' etc. Clearly, this statute transfers from the county authorities all authority and control which they previously possessed and exercised pursuant to the Constitution and laws of the State over roads and bridges within such district, and confers the same upon this board of commissioners, and as incidental thereto, all taxes and revenues, from whatever sources derived, which were formerly levied and collected for roads and bridge purposes of such district, are also removed from the care, control and disbursement of the county officials and are by this statute entrusted with other taxes, to the care and expenditure of this board of commissioners."

CONCLUSION.

We are of the opinion that Special Road Districts in Missouri which originate under Article IX, Chapter 42, R. S. Mo. 1929, are legal entities, and as such are not subject to the supervising control of the County Highway Engineer. Roads and bridges in the Special Road District are built and maintained by special tax within the district and commissioners of the district have a right to spend the district's money within its jurisdiction, and the County Highway Engineer has no authority over roads and bridges of the Special Road District by reason of his statutory authority over county road overseers.

APPROVED:

Respectfully submitted

WM. ORR SAWYERS  
Assistant Attorney General.

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ROY MCKITTRICK  
Attorney General.

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