

ROADS & BRIDGES:

Special Road District has exclusive supervision over roads within its district, to the exclusion of the county highway engineer; tools and machinery belonging to special road district also excludes right of supervision of county highway engineer.

February 11, 1936.

2-15



Honorable Wayne V. Slankard  
Prosecuting Attorney  
Newton County  
Neosho, Missouri

Dear Mr. Slankard:

This is to acknowledge your letter as follows:

"I would appreciate your opinion on the following:

"What, if any, supervisory power would a county highway engineer, appointed by the County Court of this county have over the Commissioners of a Special Road District. Would also like to know what, if any right he has over the tools and machinery belonging to the Special Road District."

For the purpose of this opinion we assume that the Commissioners of the Special Road District, referred to in your letter, are those provided for by Article 9, Chapter 42, R. S. Mo. 1929.

I.

The county highway engineer is appointed by the county court. Section 8006, R. S. Mo. 1929. Section 8013, R. S. Mo. 1929, relates to the supervision that the county

highway engineer has over the public roads of the county, and provides as follows:

"The county highway engineer shall have direct supervision over all public roads of the county, and over the road overseers and of the expenditure of all county and district funds made by the road overseers of the county. He shall also have the supervision over the construction and maintenance of all roads, culverts and bridges. No county court shall order a road established or changed until said proposed road or proposed change has been examined and approved by the county highway engineer. No county court shall issue warrants in payment for road work or for any other expenditure by road overseers, or in payment for work done under contract, until the claim therefor shall have been examined and approved by the county highway engineer."

However, special road districts, formed under and by virtue of the provisions of Article 9, Chapter 42, supra, have the exclusive supervision of roads in said districts, which, in our opinion, is an exception to the county highway engineer's supervision, by virtue of Section 8013, supra. Section 8033 of said article and chapter provides as follows:

"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."

You will note that the board of commissioners in special road districts 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.

The Supreme Court of Missouri in State ex inf. v. Meyer, 12 S. W. (2d) 489, in commenting on Section 8033, supra, said the following (l. c. 490):

"Neither the city council nor the county court has any control over the public highways within the district outside of the corporate limits of the city. Such control is lodged exclusively with the board of commissioners."

From the above it is our opinion that the county highway engineer has no supervisory power over the commissioners of a special road district.

## II.

Section 8012, R. S. Mo. 1929, places the duty upon the county highway engineer to be custodian of all road tools, except as may be otherwise provided by law. Said section reads as follows:

"The county highway engineer shall be custodian of all tools, material and machinery belonging to the road districts and to the county, except as may be otherwise provided by law. When delivering to any road overseer the tools and machinery belonging to the district, he shall require from the overseer an inventory and receipt for all such tools and machinery, and the overseer shall be responsible for the proper care and handling of said tools and machinery, and shall see that they are properly kept when not in use, and shall account for the same to the county highway engineer."

As to tools and machinery of the special road district, Section 8032, R. S. No. 1929, provides as follows:

"The county court shall, upon the organization of the board of commissioners of such special road district, deliver to such board all the tools and machinery used for working roads belonging to the districts formerly existing within the territory embraced in such special district, taking a receipt from the board for the same, and such board shall keep and use such tools and machinery for constructing and improving public roads."

From the above it is our opinion that the county highway engineer has no right over the tools and machinery belonging to the special road district.

Yours very truly,

James L. HornBostel  
Assistant Attorney-General

APPROVED:

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ROY McKITTRICK  
Attorney-General

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