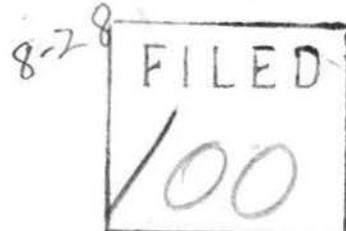


SPECIAL ROAD DISTRICT:

Prosecuting Attorney is not required to represent special road districts.

August 28, 1936.



Honorable H. Parker York
Prosecuting Attorney
Schuyler County
Lancaster, Missouri

Dear Sir:

This will acknowledge receipt of your request for an official opinion under date of August 19, 1936, which reads as follows:

"The Commissioners of a special road district in my county tell me that they are building a new road in their district with the help of Govt. aid and have met with some difficulty in that one land owner refuses to give the right-of-way for the road. The question is this: what procedure should be followed to force this road through? Should I as Prosecuting Attorney of Schuyler County represent them or should they employ counsel of their own? Under section 8025 R. S. '29 they are made a body corporate and possess all usual powers of a corporation for public purposes. They are empowered to sue and be sued in their own name. Section 1340 R. S. '29 provides a special procedure for certain corporations and 'other corporations created under the laws of this state for public use' to follow in condemning property for their use. Would a special road district come under this latter section? Or would section 7840 R. S. '29 apply?

"As this matter is urgent on account of the Govt. aid connected with it I will appreciate your giving it immediate attention."

We are assuming that the particular road district referred to in your letter was organized under Section 8024 R. S. Mo. 1929, which provides:

"Territory not exceeding eight miles square, wherein is located any city, town or village containing less than one hundred thousand inhabitants, may be organized as hereinafter set forth into a special road district: Provided, however, the provisions of this section shall not apply to counties under township organizations, and shall not apply to all counties in this state now containing or which may hereafter contain 50,000 inhabitants or more and lying adjoining any city of this state containing 300,000 inhabitants or more."

The following Section, 8025 R. S. Mo. 1929, provides that every district organized under the provisions of this Article shall be a body corporate and possess the usual power of corporation for public purposes. Said section provides as follows:

"Every such district organized under the provisions of this article shall be a body corporate and possess the usual powers of a corporation for public purposes, and shall be known and styled ' special road district of county,' as may be designated by the county court by order of record, and in that name shall be capable of suing and being sued and of contracting and being contracted with."

In the case of State ex rel. Wammack & Welborn v. Affolder 257 S. W. 493, 1. c. 494 and 495, the Court said with regard to it being the duty of the Prosecuting Attorney of said county to represent said road district in looking after a bond issue:

"Was it the duty of the prosecuting attorney to render the service which plaintiffs rendered? Section 736 and 738 prescribe generally the duties of the prosecuting attorney. There is nothing in these sections which may be said to place upon the prosecuting attorney the duty of looking after this bond issue. There are

other sections prescribing duties in particular cases, but the sections, supra, cover the field generally. The bond issue of Duck Creek township was not a matter of county wide concern. It was a matter that affected that township only. The Act of 1917 provided that in a township bond issue thereunder the county court shall act for the township. The only recognition of township organization is that the act provides in section 10750 that the proceeds of the bond sale be turned over 'to the treasurer of the district or the county or township, as the case may be.' In the reference quoted, and in section 10748, it will be seen that, not only was township organization taken into account, but also special road districts organized under sections 10800 et seq. and sections 10833 et seq., R. S. 1919. Neither the act of 19017, nor the Special Road District Acts, makes it the duty of the prosecuting attorney to advise or render service. * * * *. Since there is no statute directing generally that the prosecuting attorney shall act for the township in counties under township organization, it is our conclusion that it was not the official duty of the prosecuting attorney to render the services which plaintiffs rendered."

While State v. Affolder, supra, especially deals with the assistance of the Prosecuting attorney relative to a bond issue, we think the holding of the Court is to the problem here under consideration.

CONCLUSION

In view of the foregoing, it is the opinion of this department that, in the absence of any statutory provision requiring the Prosecuting Attorney to advise and assist

Hon. H. P. York

-4-

August 28, 1936.

a special road district, there is no obligation upon him to render this service.

Yours very truly

WM. ORR SAWYERS
Assistant Attorney General.

APPROVED:

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

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