

ROADS AND BRIDGES:

SPECIAL BENEFIT ROAD DISTRICTS: May contribute district funds to purchase of right-of-way within the district of roads, but may not do so outside of the district

January 14, 1937

Honorable Joseph C. Crain
Prosecuting Attorney
Ozark, Missouri



Dear Sir:

We have received your inquiry, which is as follows:

"The Sparta-Monger Special Road District of Christian County, Missouri, a Special Road District organized under Article 10, Chapter 42, Section 8061 Revised Statutes of Missouri, 1929, wishes to contribute a sum of money for the purchase of right of way for a farm to market highway passing through their district.

"This proposed highway will relieve them of maintaining part of the roads within their district. They would also like to know if they can contribute anything toward the purchase of right of way of this same highway in an adjoining district.

"There has been considerable discussion as to their authority to do this and I have been requested to ask your office for an opinion on this point."

Special Benefit Road Districts, under Chapter 42 of Article 10 R. S. 1929, are authorized by Section 8068 to spend money arising from the sale of bonds in the following way:

"The proceeds of the sale of such bonds shall be used for the purpose only of paying the cost of holding such election, and constructing, repairing and maintaining bridges and culverts within the district, and working, repairing, maintaining and dragging public roads within the district."

By Section 8072 they are authorized to spend money raised by special benefit taxes in the following way:

"All money collected on special tax bills and all money the commissioners may so borrow, and all interest that may accrue thereon while on deposit in any county depository, shall be used, and warrants drawn on the treasurer therefor, for the following purposes only: To pay the cost and expense incurred by the commissioners, as found by the court, in the preparation of such plans, specifications, estimate, map and profile, and said list of lands, and a reasonable attorney's fee as found by the court, for such petitioners, and to pay the cost of improving said public road or part of a public road in accordance with the plans and specifications so filed with the clerk of the county court, and such working, administrative and incidental expenses, not otherwise provided for by law, as may be incurred in making such improvement and in procuring, collecting and paying the cost of such improvement, and the balance, if any, shall be used in paying expenses of maintaining such improvement."

further providing that the money borrowed by the commissioners

shall be repaid, with interest, out of the collection of such special tax bills as were unpaid at the time such money was borrowed.

Section 8073 authorizes the district to pay out of such funds for the following purposes only:

"To pay the costs and expenses incurred by the commissioners, as found by the court, in the preparation of said plans, specifications, estimate, map and profile, and said list of lands, and a reasonable attorney's fee, as found by the court, for such petitioners, and to pay the cost of improving said public road or part of a public road in accordance with the plans and specifications so filed with the clerk of the county court, and such working, administrative and incidental expenses, not otherwise provided by law, as may be incurred in making such improvements, and the balance, if any, shall be used in paying expense of maintaining such improvement."

By Section 8065, "Said commissioners shall have sole, exclusive and entire control and jurisdiction over all public highways, bridges and culverts within the district, to construct, improve and repair such highways, bridges and culverts," and are required to keep such roads, bridges and culverts in as good condition as the means at their command will permit, and are authorized to employ hands and teams and to rent, lease or buy all things needed to carry on such work.

By Section 8066 it is provided that the poll tax and the taxes levied by the county court on the taxable property in the district shall be placed to the credit of the district and,

"All revenue so set aside and placed to the credit of any such incorporated district shall be used by the commis-

sioners thereof for constructing, repairing and maintaining bridges and culverts within the district, and working, repairing, maintaining and dragging public roads within the district and paying legitimate administrative expenses of the district, and for such other purposes as may be authorized by law."

By Section 8067, "The board of commissioners of any district so incorporated shall have power to levy, for the construction and maintenance of bridges and culverts in the district, and working, repairing and dragging roads in the district, general taxes on property taxable in the district."

By Section 8061 the county courts of counties not under township organization may divide their counties into road districts, and when so done they

"according to the provisions of this article shall be a body corporate and possess the usual powers of a public corporation for public purposes, and shall be known and styled ' _____ road district of _____ county,' and in that name shall be capable of suing and being sued, of holding such real estate and personal property as may at any time be either donated to or purchased by it in accordance with the provisions of this article, or of which it may be rightfully possessed at the time of the passage of this article, * * *."

In Schmidt v. Berghaus 205 Mo. App. 409, the Springfield Court of Appeals was construing Section 10585 R. S. 1909 under the Eight-mile District Road Law. Section 10585, there construed, is substantially the same as Section 8065, R. S. 1929, with reference to the powers of the commissioners, and the court in that case said, l. c. 413, that this section leaves "it to the discretion of commissioners as

to what roads in any district shall be improved and the manner of the improvement."

In the case of Sharp v. Kurth 245 S. W. 636, the St. Louis Court of Appeals, in discussing the liability of commissioners of such road districts, said, at l. c. 638:

"It is likewise clear that the individual defendants, being special commissioners of the road district, are not liable for their mistakes of judgment or their acts of negligence in doing work.

* * * * *

"Special road commissioners can only be held liable individually when their acts are maliciously and willfully committed."

The case of Cook v. Hecht 64 Mo. App. 273, 279, is there approved and quoted from.

We assume your county is not under township organization. We construe your inquiry to be that a joint effort is being made by others interested in the improvement of the road, and the special road district is, along with the others, agreeing to pay a part of the expense of procuring the right-of-way. We consider it well recognized that where one subscribes to a fund on condition that others do likewise said funds, when raised, to be paid over for the purpose for which raised; that a binding contract is made if not prohibited by law and no statute is contravened thereby.

Section 8065 seems to contemplate that said commissioners shall have only jurisdiction over the roads within the special road district. It says:

"Said commissioners shall have sole, exclusive and entire control and jurisdiction over all public highways, bridges and culverts within

the district."

By this expression and the other provisions of this and the other above mentioned sections, it logically follows that their authority is limited to roads within the district. The fact that the Legislature used the above quoted words definitely stating the roads over which the commissioners have jurisdiction and thereby limited their authority to those roads, reasonably indicates that their authority is limited and may not go beyond the improvement of those roads.

In the case of Keane v. Strodtman 18 S. W. (2d) 896, 1. c. 898, construing a statute, the Supreme Court of this State, in Banc, in 1929 said:

"The familiar maxim of 'expressio unius est exclusio alterius' may also be invoked, for the maxim is never more applicable than in the construction of statutes. * * * *

"Certainly where, as at bar, the statute * * limits the doing of a particular thing to a prescribed manner, it necessarily includes in the power granted the negative that it cannot be otherwise done."

Section 8061 contemplates authority in the commissioners to acquire and hold real estate; it enumerates among the district's powers that of "holding such real estate and personal property as may at any time be either donated to or purchased by it in accordance with the provisions of this article."

We are informed as a practical fact that the construction of many roads in this day and time is dependent upon procuring the right-of-way by the local authorities, that is, the county courts or the people or districts locally interested and benefited by the construction of such highways. It is, of course, as necessary to spend money in acquiring the right-of-way of a road as it is to spend money in acquiring or building the road itself.

In view of the decision of the case of Platte City Benefit Assessment Special Road District v. Couch, 8 S. W. (2d) 1003, it might be seriously contended that that part of the funds of the special road district arising from the special assessments could not be used for other purposes than the specific purposes for which the special assessments were made. However, that decision is not authority to the effect that the special road district can not expend other moneys it may have on hand from other sources for the purchase of highway right-of-ways.

Section 8131, R. S. Mo. 1929, under Article 12 of Chapter 42, dealing with the State Highway System, is as follows:

"Any civil subdivision as defined in this article shall have the power, right and authority, through its proper officers, to contribute out of funds available for road purposes all or a part of the funds necessary for the purchase of rights-of-way for state highways, and convey such rights-of-way, or any other land, to the state of Missouri to be placed under the supervision, management and control of the state highway commission for the construction and maintenance thereupon of state highways and bridges. Funds may be raised for the purpose of this article in such manner and such amounts as may be provided by law for other road purposes in such civil subdivision; provided that there shall not at any time be any refund of any kind or amount to said civil subdivision by the state of Missouri for lands acquired under this section."

Section 8132 thereof defines the term "civil subdivision" in broad enough terms that special benefit road districts appear to be included within that meaning.

The true object of the Legislature was to confer upon the commissioners of such a district the authority to use their best judgment in the manner and method of spending the district's funds, in order that the greatest good might come to

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the improved road system of the district. That objective may sometimes be attained by contributing some of the funds of the district in the joint effort to procure the right-of-way, and may result in greater good to the improved road system of the district than would result if they did not so contribute.

CONCLUSION

We are of the opinion that the special road district has authority to pay out a reasonable amount of the funds of said district (except the funds arising from special benefit taxes) to go to the purchase, within the district, of the right-of-way of a farm to market road running through the district, if, in good faith, said commissioners, exercising their best judgment, believe it to be to the advantage of the road system within said district so to do. If the right-of-way sought is outside of the district, it appears to us the money of the district should not be expended for or toward the purchase thereof.

Yours very truly,

DRAKE WATSON,
Assistant Attorney General.

APPROVED:

J. E. TAYLOR,
(Acting) Attorney General.

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