

ROADS AND BRIDGES:

Special Road Districts organized under Article 9, Chapter 42, R. S. Missouri 1929, may purchase right-of-way and convey same to state for highway purposes.

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Hon. O. A. Kamp
Prosecuting Attorney
Montgomery County
Montgomery City, Missouri

Dear Sir:

This department is in receipt of your letter of August 16, 1937, in which you request an opinion, as follows:

"The Road Commissioners of Mineola Special Road District, Montgomery County, Missouri, organized under Article 9 R. S. 1929, would like to know whether or not they have legal authority to use the funds of the district to pay for road right-of-way to be conveyed to the State for State Highway.

I refer you to Section 8047, R. S. 1929, and Section 8131, R. S. 1929, and would like to have your opinion as to whether they have a legal right to use the district funds for purchasing right-of-way."

Section 8047 of Chapter 42, Article 9, R. S. 1929, under which this special road district is organized, is as follows:

"The fund received from the poll and road tax of said district shall constitute a general district road fund, and shall be disbursed only as hereinbefore provided, and shall be used only for working, repairing and improving the public roads of such district as herein provided, and for no other purpose; and no

part thereof shall be used for paying damages and costs for opening new roads, but all such damages and costs for opening new roads paid by the county shall be paid out of the other county revenue, except as this article may otherwise provide."

It is no where provided in Article 9, Chapter 42, R. S. 1929, that special road districts in counties ^{not} under township organization, may use their funds to purchase right-of-way to be conveyed to the state for state highway purposes, but, to the contrary, it seems that Section 8047, above quoted, specifically prohibits this being done.

Section 8131 of Chapter 42, Article 12, R. S. 1929, relating to the State Highway Department and System is, in part, 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 right-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."

Section 8132, R. S. 1929, is as follows:

"Whenever in the preceding section the words "civil subdivision" are used, they shall be deemed and taken to mean a county, township, road district or other political subdivision of the state or quasi public corporation having legal jurisdiction of the construction and maintenance of public roads."

We do not think it can be questioned, that by this definition of "civil subdivision" a special road district organized under Article 9 of Chapter 42, R. S. 1929, is included within the provisions of Section 8131, supra.

The question for determination, with the foregoing in view, appears to be whether the provisions of Section 8131, R. S. 1929, repeal or amend, by implication, the provisions of Section 8047, R. S. 1929. This is to be determined largely from what the intention of the legislature was when it enacted Section 8131, R. S. 1929.

It may be contended in this respect that such an amendment by implication is void by reason of the provisions of Section 34, Article 4 of the Constitution of Missouri, concerning how an act may be amended, but in *Schott v. Continental Auto Insurance Underwriters*, 31 S. W. (2d) 1.c. 11, it is said by the court that:

"As to this it is sufficient to say that the constitutional provision mentioned has no application to repeals or amendments by implication."

Further in the *Schott* case, supra, at 1.c. 11, it is said:

"It is * * * true that the presumption against implied repeals has peculiar and special force when the conflicting provisions which are thought to work a repeal are contained in a local or special act and a later general act. The presumption is that the special is intended to remain in force as an exception to the general act. * * * But there is no rule which prohibits the repeal of a special act by a general one, the question being one of intention."

To determine the intention of the legislature it is said in *Holder v. Elms Hotel Co.*, 92 S.W. (2d) 1.c. 622, that:

"Since the title to an act is essentially a part of the act and is itself a legislative expression of the general scope of the bill, it may be looked to as an aid in arriving at the intent of the Legislature."

We shall refer to the title of the act that is now Section 8131, R. S. 1929, which is found in Laws 1929, p. 226, and is as follows:

"An act authorizing civil subdivisions to contribute all or part of funds for the purchase of rights-of-way for state highways out of road funds and convey land to state for construction and maintenance thereon of state highways and bridges: * * * defining civil subdivisions."

The title of the act when considered with the act itself, expresses a plain intention that this act was intended to include all "civil subdivisions" as defined by Section 8132 R. S. 1929, and which, we think, includes special road districts organized under the provisions of Article 9 of Chapter 42, R. S. 1929, which are those special road districts in counties under township organization.

Section 8047, R. S. 1929, is a special enactment concerning those road districts organized under Article 9 of Chapter 42, R. S. 1929, and Section 8131, R. S. 1929, is a statute of a general nature, intended to cover all "civil subdivisions" and was enacted in Laws of 1929, p. 226, and subsequent to the enactment of Section 8047, R. S. 1929.

In O'Malley, Superintendent of Insurance Department v. Prudential Casualty & Surety Co., 80 S. W. (2d) 896, 897, it is said:

"A general statute will not be held to repeal a former statute special in its nature unless the intent to repeal is manifest, or the two acts are so patently inconsistent that they cannot stand together."

This rule has been followed in a long line of Missouri cases.

In the instant matter, before us for determination, we think it is clear, from the reading of Sections 8131 and 8132, R. S. 1929, and the title thereof, supra,

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that the intention of the legislature was that all "civil subdivisions" as defined, should have the authority granted them in this section and that the intention of the legislature in said section was to repeal Section 8047, R. S. 1929, in so far as it prohibited special road districts, organized under Article 9, Chapter 42, R. S. 1929, from contributing all or a part of the funds necessary for the purchase of rights-of-way to be conveyed to the state. It cannot be claimed that these two enactments are not patently inconsistent and being so, they cannot stand together, but the latter act in view of the legislative intent must prevail.

It is, therefore, the opinion of this department that special road districts organized under the provisions of Article 9, Chapter 42, R. S. 1929, these being road districts in counties which have adopted township organization, may 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 to the State of Missouri to be placed under the control of the State Highway Commission.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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