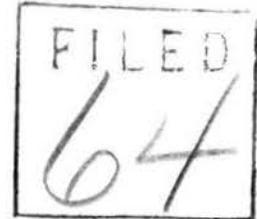


ROADS: Territory embracing only part of a town cannot be incorporated under Section 8024, R.S. 1929.

August 5, 1938

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Hon. L.I. Morris
Prosecuting Attorney
Lafayette County
Lexington, Missouri

Dear Sir:

This will acknowledge receipt of your inquiry of recent date which reads as follows:

"At the special request of Odessa Special Road District No. 2, Odessa, Lafayette County, Missouri an opinion is asked on the following set of facts:

'Odessa Special Road District No. 2 is a duly organized Road district under the provisions of Missouri Revised Statutes of 1929, Section No. 8024. This section provides for the organization of such special districts. As a matter of fact, three such special districts were organized and each of the three took in one third of the city of Odessa, Missouri. Each of the three operated under this section (8024) and after a few years existance No. 3 District voted back into the County system. This leaves two existing Districts at the present time.

District No. 2 desires to vote bonds for resurfacing the 60 miles of road in that district but before doing so and before making an application for Federal Funds they wish to know whether under the existing circumstances, these two districts can exist in the city of Odessa.

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The district wishes to know whether the fact that the two remaining districts (either or both) have complied with the provisions of the section mentioned (8024), in that there are two of them and the two exceed the 8 miles square mentioned in this section. The area of the two is double that specified and they wish to know whether either or both districts will have the right to submit the bond question to the voters of the district'."

As we read your letter, there are two special road districts supposedly incorporated under Section 8024, R.S. Missouri, 1929, each of which embraces only a part of the City of Odessa, and the other part of said city is not in a special road district. The question is, are the two special road districts, each of which contains a part only of the City of Odessa, legally incorporated?

We think it axiomatic that in the absence of statutory authority, no body of people can create themselves a political corporation. Only such corporations can be created as are authorized by statute. In 43 C.J. 79, it is said:

"Except in so far as it is controlled by constitutional provisions, the legislature has the power to determine what bodies shall be incorporated; and the body seeking incorporation must show itself to be substantially within the terms of the legislative requirement."

We must then look to the statutes to see what territory can be organized as a special road district of the class under consideration. Section 8024, R.S. Missouri, 1929, reads as follows:

"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: * * * *

It will be noted that by the foregoing statute, "territory not exceeding eight miles square, wherein is located any city, town or village containing less than one hundred thousand inhabitants, may be organized" into a special road district. Territory containing part of a city, town or village is not authorized to be incorporated into a special road district. Section 8026, R.S. Missouri, 1929, provides that the mayor and members of the city council of any city or town within such special road district, together with the county court of the county, shall jointly select commissioners for such special road districts. Reference to Section 8034, R.S. Missouri, 1929, will show that the commissioners of such special road districts are authorized to expend a portion of the revenue of such districts in grading and repairing the roads or streets within the corporate limits of any city within said special road district. Section 8041, R.S. Missouri, 1929, refers to licenses collected by any city within such special road districts.

We think it is clear that before any territory can be organized into a special road district under Section 8024, such territory must have within its boundaries a city, town or village. No provision is made in said section for incorporating territory which contains a part of a city, town or village.

43 C.J. 80 reads in part as follows:

"However, it is within the power of the legislature, subject only to such constitutional restraints, if any, as may exist, to determine the nature and extent of the territory to be incorporated, and in some instances it has exercised this power by prescribing the minimum or maximum area which may be incorporated, or by prescribing the nature and character of the territory which may or may not be incorporated."

By Section 8024, the legislature of this state has determined the nature and extent of the territory which may be incorporated into a special road district, ^{by} prescribing a maximum of territory which may be so incorporated, and by

declaring that such territory must contain within its boundaries a city, town or village. Before any territory can be incorporated under this section, it must come within such limitations as to the nature and extent of the territory set forth in said section.

In the case of State ex rel. v. McReynolds, 61 Mo. 203, the court was considering whether under a statute authorizing county courts to incorporate towns and villages and their commons, the county court could incorporate agricultural lands adjacent to such towns and villages. In connection with the discussion of such question, the court said at l.c. 210:

"It, I think, follows that the county court under the act of the legislature first referred to, only had power to incorporate towns and villages as laid out and surveyed into lots, streets, alleys or other public grounds and commons belonging thereto, as laid out and designated for public uses, and that any attempt by the county court to incorporate the farming lands of the country, even in the vicinity of a town, would be wholly without authority and inoperative."

We think the foregoing case follows the general doctrines heretofore referred to, to the effect that only such territory as comes within the statute authorizing incorporation can be incorporated, and that an attempted incorporation of territory not authorized to be incorporated is void.

In the case you refer to, there are two special road districts presumably incorporated under Section 8024 of the Statutes, but the territory represented by such districts was not territory which could be incorporated under Section 8024.

Bonds issued by a special road district which is not legally incorporated would not likely be registered nor could they be sold. It would, therefore, seem unwise for such a district to attempt to vote bonds.

Hon. L.I. Morris

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CONCLUSION

It is, therefore, the opinion of this office that territory which comprises only a part of a city, town or village cannot be incorporated under the provisions of Section 8024, R.S. Missouri, 1929.

Respectfully submitted,

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APPROVED By:

J.E. TAYLOR
(Acting) Attorney General

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