

ROADS AND HIGHWAYS:

Maintenance of road
Districts and the right
of a road commissioner
to employ himself.

February 11th, 1939



Hon. Herbert H. Douglas,
Prosecuting Attorney,
Newton County,
Neosho, Missouri.

Dear Sir:

This will acknowledge your letter
of January 2nd, in which you request an
opinion from this office as follows:

"As to what roads [meaning
county, state, U.S. etc.], if
any, does the county court in
a county the size of Newton
have the right to expend
money on?

Can a road commissioner proper-
ly work for the road district
that he is commissioner for
without subjecting himself to
be disqualified as a commis-
sioner?"

I.

Relative to your first question, we
here set forth in brief the existing perti-
nent statutes pertaining thereto as follows.

Section 7839 defines what are legally
established roads.

Section 7858 creates a county highway system consisting of not to exceed one hundred (100) miles of roads in a county and which are denominated "farm-to-market" roads.

Section 7866 provides for transfer of any part or all of the county highway system to the state highway system.

Section 8104 specifies what roads are controlled by the State Highway Commission.

Section 8134 provides for the cost of maintenance of state roads, or the state highway system [and the roads which have been designated or marked as U.S. highway are part of the state highway system], to be paid by the state Highway Commission from state funds.

Articles 9 and 10, chapter 42, provide for the creation of Special Road Districts in certain counties, and such provisions are applicable to Newton County.

Sections 7890, 7891 and 7867 provide for the levy, collection and distribution of taxes for road purposes.

For brevity's sake, we have not undertaken to set out here in full, or in part, the context of the aforesaid several statutes and articles, but reference to such will enable the interested to turn to them and note in full the respective provisions therein contained.

Suffices it to say, in answer to your question, that a summary of the enactments mentioned authorizes the county court to direct the expenditure of money on any legally established roads in the county, that is, not a part of the state highway system, or a part of the special road district.

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As before noted, the county court has nothing to do with the maintenance of roads or highways in a county which constitutes part of the state highway system.

Furthermore, in the case of roads within a special road district, the taxes levied and collected for road purposes on property within such districts, is expended on such districts, under the direction of the road commissioner of the district and not by the county court.

II.

Relative to your second question, we assume that the commissioner you mentioned is working for the road district as an employe thereof, and receiving pay as an employe from the funds of the district.

Section 18, Article 9 of the Constitution of Missouri prohibits a person from holding any two of the different offices enumerated and specified at one and the same time.

The common law rule, in the absence of constitutional or statutory provision, is applied in this state prohibiting any one person holding two offices which are incompatible. See *State v. Bus*, 135 Mo. 330.

However, a person employed by the Commissioner of a road district is not an officer, nor does he hold an office, by reason of such employment. See *State v. Gray*, 91 Mo. App. 1. c. 443.

Consequently, neither the constitutional provision or the common law rule noted, concerning office and officers have any bearing in this case.

Section 13 of Article 14 prohibits nepotism. The section itself shows that it comprehends or involves two persons, namely, the one appointing and the one appointed to office or service, by reason of the fact that the degree of relationship between the two is the keystone of the section.

Even assuming that the commissioner in question acted with the other two commissioners in appointing, hiring or employing himself, we are unable to find any authority whereby a man, legally speaking, can employ or appoint himself to an office or position of employment, and thereby violate the nepotism provision, by reason of the fact that a person cannot be a relative of himself or herself. The nepotism provision would not be applied in such a case.

In consequence of the foregoing, we are of the opinion that the road commissioner in question has not disqualified himself from further holding his office by reason of the fact that he works for or is employed by the road district.

However, we are not saying that such employment is legal, that is, that such Commissioner is legally entitled to be paid for his services. On the contrary, our opinion is that a road commissioner is not legally entitled to compensation for work done on the roads in his district at the time of holding the office of road commissioner of such a district for the reason that such employment and payment would be and is contrary to public

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policy. See State v. Bowan, 184 Mo. App.
547.

Respectfully submitted,

HARRY H. KAY,
Assistant Attorney General.

APPROVED:

J. W. BUFFINGTON,
(Acting) Attorney General.

HHK:RV