

ROADS AND BRIDGES: When County Court may change boundaries of road districts in counties not under township organization.

January 21st, 1939.

Hon. Melvin Englehart,  
Prosecuting Attorney,  
Madison County,  
Fredericktown, Missouri.

Dear Sir:

This will acknowledge receipt of your letter of January 13th, 1939, requesting an opinion concerning the provisions of Section 7868 and 7870, R. S. Mo., 1929.

The questions are: (1) May the County Court of Madison County disregard the provisions of Section 7868 R. S. Mo., 1929, and redivide the county into suitable size road districts at any time said court so desires, and (2) May said court refuse to appoint overseers for said districts as is provided for under the terms of Section 7870 R. S. Mo., 1929?

Section 7868, supra, is as follows:

"The county courts of all counties, other than those under township organization, shall, during the month of January, 1918, with the advice and assistance of the county highway engineer, divide their counties into road districts, all to be numbered, of suitable and convenient size, road mileage and taxable property considered. Said courts shall, during the month of January biennially thereafter, have authority to change the boundaries of any such road district as the best interest of the public may require."



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The terms of the statute are clear beyond doubt, in that the county court, in counties not under township organization, were authorized and directed, in January 1918, to divide their counties into road districts. It is equally clear that said statute authorizes the court biennially thereafter, in the month of January, to change the boundaries of any such district so created.

Whether or not the court must follow the terms of this statute, in the latter respect, depends on whether said statute is mandatory or directory. In 59 C. J. p. 1078, Section 634, the general rule to follow as a guide to determine whether this type of statute is mandatory or directory is stated, as follows:

"A statute specifying a time within which a public officer is to perform an official act regarding the rights and duties of others, and made with a view to the proper, orderly, and prompt conduct of business, is usually directory, unless the phraseology of the statute, or the nature of the act to be performed and the consequences of doing or failing to do it as such time, is such that the designation of time must be considered a limitation on the power of the officer. So a statute requiring a public body, merely for the orderly transaction of business, to fix the time for the performance of certain acts which may as effectually be done at any other time is usually regarded as directory."

This statement has been approved by the Supreme Court of Missouri in numerous cases. See: Schlafly v. Baumann, 108 S. W. (2d) 363; Mead v. Jasper County, 18 S. W. (2d) 464; State ex rel inf. Gentry v. Lamar, 291 S. W. 457; St. Louis County Court v. Sparks 10 Mo. 117.

In the Schlafly case it is held that the provision of the "Jones-Munger" Act (Sec. 9952-a, Laws 1933, p. 430), requiring tax sales to be held "on the first Monday of November of each year", were mandatory. This, because

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such provision was not for the convenience of the officials or the dispatch of their duties, but rather for the benefit and protection of the landowner.

Such a similar situation does not exist in the instant case. There is nothing pertaining to the formation of these road districts that affects the rights of the citizens residing therein. The county court levies a general road tax, county wide, at a single rate, and not a different levy for each district, (Sec. 7890 R. S. Mo., 1929). The same is also true as to the special road tax authorized by Section 7891 R. S. Mo., 1929. However, the funds raised under both these levies must be paid over to the road district from which it was collected. Rolla Special Road District, Phelps County v. Phelps County, 116 S. W. (2d) 61; Hawkins v. Cox, 66 S. W. (2d) 539. In other words, the road district is guaranteed that all taxes collected from it will be spent on its roads.

The fact does not militate against the contention that Section 7868, supra, is directory, because after abolition of a district, by boundary changes, the taxes previously levied but not collected can be spent, when collected, on the roads of the former district from which collected, until all taxes levied on the property in the area comprising said district, prior to its abolition, have been collected and expended.

Another thing which supports us in saying this statute is directory and the fact that the abolished road district is entitled to the taxes collected from it, do not make it otherwise is the very provision about which we are concerned. The legislature in express terms authorized boundary changes every two years. They, of course, presumably knew that such a change in boundaries might result in a district being abolished and that when that occurred, there would be in many instances taxes which had been levied while a district was in existence and not collected until after January in the even numbered years, when they authorized the court to change boundaries.

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CONCLUSION

Therefore, it is the opinion of this department that the provisions of Section 7868, R. S. Mo., 1929, as to when the County court may change the boundaries of road districts are directory only, and being so, the court is not expressly bound to follow said provisions.

As to your second question, we are enclosing a copy of an opinion rendered to W. W. Crockett on January 25, 1935, which holds the county court may, by alteration of boundaries, make the county as a whole comprise a single road district and refuse to appoint a road overseer for such district.

APPROVED

Respectively submitted,

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LLB:RV