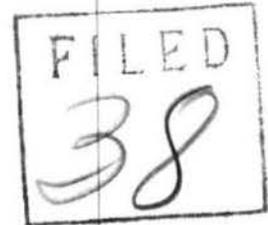


SPECIAL ROAD DISTRICTS: County Court should make every effort to comply with the terms of Section 8026, R. S. Mo. 1929, and proceed to appoint commissioners.

April 2, 1940

Honorable Robert W. Hawkins
Prosecuting Attorney
Pemiscot County
Caruthersville, Missouri



Dear Sir:

This Department is in receipt of your letter of March 5th, which is as follows:

"In re Bragg City Special Road District, Pemiscot Co., Mo.

"The above mentioned road district is organized under Article 9, Chapter 42, R. S. Mo., 1929, by order of the County Court of Pemiscot County, Missouri.

"At the time of the organization of this district Bragg City, Missouri, was a town, the duly elected officers consisting of a mayor and a Board of Aldermen, and was situated within the boundaries of Bragg City Special Road District.

"Subsequent to the organization of the Bragg City Special Road District, while the town of Bragg City has never been disincorporated, its citizens have ceased to elect city officials, and those who were elected have removed from the city, so that at the present time there are no officers of the town of Bragg City. At the present

time all of the original members of the Board of Commissioners of the special road district have removed from the district, except one, so that it is necessary to procure the appointment of succeeding members of the Board. Section 8026, R. S. Mo., 1929, Ann. Stat. p. 6837, provides, among other things, that the mayor and members of the city council within a special road district, together with the members of the county court, at a meeting to be held in the county court room, shall select and appoint succeeding commissioners, or, if the city or town is located more than ten miles from the meeting place of the county court, the mayor and city council of the town within the district may make written certificate of their choice, and transmit the same to the county court, and the same shall be given the same consideration as though the board and mayor were present at the meeting of the court.

"Interested taxpaying citizens have requested the county court to appoint succeeding commissioners for the Bragg City Special road district, but the court has refused to make the appointment because there is no acting mayor or board of aldermen of the city of Bragg City to serve with them in making such appointment, and has requested that I request your

opinion as to the power of the county court, acting on its own behalf, at the request of interested taxpaying citizens in the district, to make appointment of succeeding commissioners in this district."

You have quoted the pertinent part of Section 8026, R. S. Mo. 1929, which relates to the appointment of commissioners in the Bragg City Special Road District.

In the decision of State ex inf. Holt v. Meyer, 12 S. W. (2d) 489, it was held to the effect that neither the Mayor and the members of the Council nor the members of the County Court meet as officers of either the cities or the county but as representatives of the whole district for the sole purpose of appointing commissioners and that each is entitled to a vote.

In the decision of State ex rel. Richardson v. Baldry, 331 Mo. 1006, l. c. 1012, it would appear that the chairman of the meeting, as provided in Section 8026, is to determine the qualifications of those persons who present themselves to vote for the commissioners.

Coming closer to the real question which you present, and applying the real facts to the same, it appears that the officers of the town of Bragg City are still de facto officers if not de jure. We think the best manner in which to proceed would be to notify the former Mayor and other officers of Bragg City, as far as practicable, in compliance with Section 8026. As stated in the Meyer case, such former officers would not be acting in their former official capacity but as individuals representing the community. In other words, every effort should be made by the County Court to comply with Section 8026, and if the meeting is properly held and no one

objects to the procedure because the Council and Mayor of Bragg City are not officers of the city, or if the officers appear and attend the meeting and the vote is taken on the commissioners, we think that the commissioners so appointed would be legally appointed. The chairman of the meeting has discretionary powers and acts in an extra-judicial capacity in determining the qualifications of the parties who are entitled to vote.

Respectfully submitted,

OLLIVER W. NOLEN
Assistant Attorney-General

APPROVAL:

COVELL R. HEWITT
(Acting) Attorney-General

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