

ROADS AND BRIDGES: Commissioners of special road district organized under Art. 18, Chapt. 46, R. S. Mo., 1939, have exclusive control over all roads, bridges and culverts within said district.

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December 29, 1941

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Hon. Russell S. Noblet
Prosecuting Attorney
Nodaway County
Maryville, Missouri



Dear Sir:

We are in receipt of your letter of December 9, wherein you request an opinion on the following statement of facts:

"May I please have your opinion on the following question?

"In the event that a special road district is organized and the roads are constructed by or for the special district, is it the obligation of the special road district to keep up and maintain and repair the roads and bridges built for such special district, or is it partially an obligation of the township to help maintain and repair such roads?

"Is it necessary that the township make it a township road before they acquire such obligation or does such a road automatically become part of the township roads and thus necessarily a partial obligation for the township?

We assume from your letter that it is contemplated to organize a Special Road District under Article 18, Chapter 46, R. S. Missouri, 1939. This being true, we call atten-

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tion to Section 8840 R. S. Missouri, 1939, which Section provides in part as follows:

" * * * Said commissioners shall have sole, exclusive and entire control and jurisdiction over all public highways, bridges and culverts, within the district to construct, improve and repair such highways, bridges and culverts, and shall have all the power, rights and authority conferred by law upon road overseers, and shall at all times keep such roads, bridges and culverts in as good condition as the means at their command will permit, and for such purpose may employ hands and teams at such compensation as they shall agree upon; rent, lease or buy teams, implements, tools and machinery; all kinds of motor power, and all things needed to carry on such work: Provided, that said commissioners may have such road work, or bridge or culvert work, or any part thereof, done by contract, under such regulations as said commissioners may prescribe."

In the case of State v. Myers, 12 S. W. (2d) 489, l. c. 490, the court had this to say:

"* * * Neither the city council nor the county court has any control over the public highways within the district outside of the corporate limits of the city. Such control is lodged exclusively with the board of commissioners. Section 10809, R. S. 1919."

We wish to point out that Section 10809 R. S. Missouri, 1919, referred to in the quotation above, is now Section 8682 R. S. Missouri, 1939, and, although this latter section deals with the organization of special road districts in counties having a population of 50,000 to 300,000, we wish to call attention to the similarity of the wording between Section 8682, supra, and Section 8840, supra. For comparison we copy Section 8682, supra:

"Said board shall have sole, exclusive and entire control and jurisdiction over all public highways within its district outside the corporate limits of any city or village therein to construct, improve and repair such highways, and shall remove all obstructions from such highways, and for the discharge of these duties shall have all the power, rights and authority conferred by general statutes upon road overseers, and said board shall at all times keep the public roads under its charge in as good repair as the means at its command will permit, and for this purpose may employ hands at fixed compensations, rent, lease or buy teams, implements, tools and machinery, all kinds of motor power, and all things needful to carry on such road work: Provided, that the board may have such road work or any part of such work done by contract, under such regulations as the board may prescribe."

Therefore, we are of the opinion that Section 8840, supra, would be interpreted to mean that the commissioners of a road district organized under Article 18, Chapter 46, R. S. Missouri, 1939, would be vested with exclusive and entire control over all public highways, bridges and culverts in said district, and that the case of State v. Myers, supra, would be followed by the courts.

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CONCLUSION

We are of the opinion that the commissioners of a new special road district organized under Article 18, Chapter 46, R. S. Missouri, 1939, have sole, exclusive and entire control and jurisdiction over all public highways, bridges and culverts within such special road district, existing at the time of the organization, and the construction, erection and maintenance after organization.

Respectfully submitted

B. RICHARDS CREECH
Assistant Attorney General

APPROVED:

VANE C. THURLO
(Acting) Attorney General

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