

ROADS AND BRIDGES: - Commissioner of Special Road District - while employed by District - cannot recover for loss of time and medical care.

February 16, 1942

Hon. W. Oliver Rasch
Prosecuting Attorney
Jefferson County
Hillsboro, Missouri



Dear Sir:

We are in receipt of your request for an opinion, which reads as follows:

"The De Soto Special Road District is a special road district in this county. In the early part of 1941 one of the commissioners was doing some work upon some of the District's equipment and was injured-- received a broken leg. This commissioner was and still is the treasurer of that District.

"The District paid approximately \$150.00 or \$175.00 for doctor bills for the injured commissioner; and on December 13, 1941, paid him \$600.00 for loss of time.

"The report of the commissioners showing these items was filed with the county court recently in accordance with the provisions of Section 8699 R. S. Mo. 1939. The court refused to approve the settlement because of these items.

"What jurisdiction does the county court have in this matter, and is there any action that they may take

for recovery? In general what action for recovery should be taken and by whom?"

From your request I am assuming that the special road district was formed under Section 8673 R. S. Missouri, 1939, which is commonly called the "Eight-Mile Square Road District."

Section 8674 R. S. Missouri, 1939, sets out the powers of such special road district. It was held in the case of American Fire Alarm Company v. Board of Police Commissioners, 227 S. W. 120, that a special road district possesses power of suing and being sued and of having a common seal.

Commissioners of Special Road Districts, as organized under Section 8673, supra, are appointed under Section 8675 R. S. Missouri, 1939.

The powers of the Board of Commissioners are set out in Section 3682 R. S. Missouri, 1939.

Under Section 8699 R. S. Missouri, 1939, it is the duty of the Board to make an annual settlement with the county court and said settlement shall contain a full itemized statement of all moneys received, and for what purchases the same have been expended, giving each particular item. There is a penal section, which is Section 4483 R. S. Missouri, 1939, which provides for the punishment of fraudulent disbursements of moneys. This section was construed in the case of State v. Holder, 72 S. W. (2d) 489. In that case, an attempt was made to prosecute a road commissioner who had received pay for work performed in the road district. The road district involved in that case was a road district organized under Article 11, Chapter 46, which is a special road district under the benefit assessment plan. Under this road district system the road district must contain not less

than six hundred and forty acres of land, but the same reasoning of law would apply to the road district known as the "Eight-mile square road district" as organized under Section 8673 R. S. Missouri, 1939. The court, in that case, at page 490 said:

" * * * It was not charged that respondent did not perform the labor for which the claim was allowed or that the district did not receive full value therefor. The primary purpose for which money of a special road district is to be expended is for the upkeep of the roads of the district. The money was, therefore, appropriated and expended for the specific use intended by the law. In other words, the facts alleged in the information disclose, without doubt, that the funds were not diverted from their proper channel. The diversion of funds was the evil sought to be remedied by the section in question."

We find no law for the payment for loss of time by an injured employee of a special road district. We also find no law for the payment of doctor bills of approximately One Hundred and Fifty to One Hundred Seventy-five Dollars.

Under the provisions of Section 8680 R. S. Mo., 1939, the commissioners of the special road district are to serve in that capacity without compensation. You also ask in your request whether or not the county court may take any action for the recovery of the money illegally disbursed to the commissioners. Under Section 8699 R. S. Missouri, 1939, the board of commissioners of a special road district settle with the county court by a full itemized statement of all moneys received and from what sources received, and for what purposes the same have been expended.

The money being the property of the road district, any action that is brought for the illegal disbursement of the special road fund may be brought by the special road district and cannot be brought by the county court.

A taxpayer who has any interest in the subject of any action may bring an action to recover the money illegally disbursed, if the special road district does not bring such an action or refuses to bring such an action. If such an action is brought by a taxpayer upon the refusal of a special road district to file a suit for the recovery of the money illegally disbursed, the special road district could be made a party to the suit. It was so held in *St. Paul & Kansas City Short Line R. Co. et al v. United States Fidelity & Guaranty Co.*, 105 S. W. (2d) 14, 1. c. 20, where the court said:

"Moreover, it must be borne in mind that this is a suit in equity and that the rule in reference to such suits is that every person having any material interest, legal or beneficial, in the subject matter is properly made a party. *Breimeyer v. Star Bottling Co.*, 136 Mo. App. 84, 117 S. W. 119.

"It is provided by section 700, Revised Statutes of 1929 (Mo. St. Ann. Sec. 700, p. 909): 'All persons having an interest in the subject of the action, and in obtaining the relief demanded, may be joined as plaintiffs, except as otherwise provided in this article.'"

Also, in the case of Smith et al v. Hendricks, 136 S. W. (2d) 449, l. c. 453, the court said:

"It is a familiar principle of equity that if A. has a cause of action at law, which he alone can assert, but in which B. has an interest, and A. refuses to bring the suit at law, B., by alleging a proper demand and a refusal of A. to bring the suit, can successfully maintain an action in equity to recover for A., because B. is interested in the recovery and it is A.'s duty to bring the suit."

In that case the court also held that the municipal corporation, which in this request is the special road district, had a plain cause of action for moneys illegally disbursed and that also a taxpayer, upon refusal of the special road district to bring such an action, may bring the action, provided the special road district was made a party to the suit. In that case the court, at page 456 held:

"In State ex rel. Buchanan County v. Fulks, 296 Mo. 614, loc. cit. 635, 247 S. W. 129, loc. cit. 135, it is again said: 'In 7 R. C. L. 965, it is said: "If a county has a plain cause of action for an injury done to it, which should be enforced for the protection of its citizens or taxpayers, and its governing board refuses to assert such cause of action, in some jurisdictions any citizen, by reason of his indirect interest, may sue, in behalf of himself and others similarly situated, the person against whom the cause of action exists, and thereby enforce the rights of the county. And like-

wise where an unjust and illegal burden is being imposed on the taxpayers by a county, or the money or property of the county, to replace which taxation must be levied, is being wasted or squandered, a taxpayer has such a direct interest that a bill to enjoin the threatened burden will lie." *Newmeyer v. Missouri & M. R. Co.*, 52 Mo. 81, 14 Am. Rep. 394; *Carson v. Sullivan*, 284 Mo. 353, 361, 223 S. W. 571; *Harris v. Langford*, 277 Mo. 527, 533, 211 S. W. 191.

"In *Castilo v. State Highway Commission*, 312 Mo. 244, loc. cit. 262, 279 S. W. 673, loc. cit. 675, en banc, it was held that the plaintiffs, as taxpayers could maintain the suit if the State Highway Commission was acting unlawfully, and, concerning this question, said: '* * * If plaintiffs are resident taxpaying citizens, the cost of constructing highways authorized by law will be paid, not by the entire public, but by the taxpaying class of which plaintiffs are members, and which they here represent. If funds be raised by taxation, and expressly set apart by law for the construction of certain highways designated by statute, are expended upon other and different highways not authorized by law, as plaintiffs specifically plead, the necessary conclusion from the facts pleaded is that the burden of taxation on resident taxpaying citizens will be increased. The roads lawfully designated will have to be constructed and maintained out of additional funds raised to replace money unlawfully diverted. Failure to allege the ultimate fact that plaintiffs' taxes will be in-

creased when this conclusion necessarily arises from facts sufficiently pleaded, is not material. * * * "

CONCLUSION

In view of the above authorities it is the opinion of this department that a special road district is a corporation and derives its entity solely from the statutes and under the facts in your request the county is not a proper party to suit to recover money illegally disbursed by the commissioners of the special road district, but the suit must be filed, either by the special road district, or upon their refusal, by a taxpayer.

We are further of the opinion that the road commissioner mentioned in your request is not entitled to receive reimbursement for medical attention or for loss of time.

Respectfully submitted

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APPROVED:

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