

ROADS AND BRIDGES: Commissioners of road districts formed under Article 11, Chapter 46, R. S. Mo. 1939, elected by voters of district who qualify under Section 11469, Laws of Missouri 1943, Page 555.



June 5, 1946

6/14

Honorable G. Logan Marr
Prosecuting Attorney Morgan County
First National Bank Building
Versailles, Missouri

Dear Sir:

Receipt is hereby acknowledged of your request for an official opinion of this department reading as follows:

"In Morgan County, Mo, a road district, special, was organized under Art. 11, Chap 46, starting with sec 8710.

"In the course of voting for new commissioners, there is a state of confusion concerning the qualification of the voters. The evident intent and requirement of the article 11 requires that land owners be the sponsors and the commissioners of the said special road district. The reading of the case of State ex rel Heffernan 243 Mo. 442, 148 SW 90, would indicate that the voters for commissioners should be land owners. But section 8712, does not indicate that only land owners shall be the voters.

"It would seem that the word landowner as a voter was omitted in a revision of the law in the session acts of 1913 at page 677.

"I want an opinion as to who is a qualified voters in the election of commissioners of a special road district organized under article 11 of Chap 46, R. V. Statutes of Missouri 1939?"

In your request you indicated that a special road district has been formed in Morgan County under the provisions of Article 11, Chapter 46, R. S. Mo. 1939. Section 8710 of this article provides in part as follows:

"County courts of counties not under township organization may divide the territory of their respective counties into road districts, and every such district organized according to the provisions of this article shall be a body corporate and possess the usual powers of a public corporation for public purposes, and shall be known and styled '_____ road district of _____ county,' and in that name shall be capable of suing and being sued, of holding such real estate and personal property as may at any time be either donated to or purchased by it in accordance with the provisions of this article, or of which it may be rightfully possessed at the time of the passage of this article, and of contracting and being contracted with as hereinafter provided. * * *

The selection of commissioners for such special road districts formed under the provisions of this Section is provided by Section 8712, R. S. No. 1939, which, insofar as it applies to your question, provides as follows:

"At the term of court in which such order is made, or at any subsequent term thereafter, the court shall appoint three commissioners, who shall be residents of the district and owners of land within the district, who shall hold their office until the first Tuesday after the first Monday in January thereafter; and on said date the voters of the district, at an hour and place to be filed by said commissioners, shall elect three commissioners, one of whom shall serve one year, one for two years and one for three years, and on the first Tuesday after the first Monday in January each year thereafter they shall elect a commissioner to take the place of the one whose term is about

to expire, who shall serve three years. No person shall be elected or appointed commissioner who is not a resident of the district and an owner of land in the district. * * * *"

(Emphasis ours.)

It is noted that, under this section when a road district is organized, the commissioners are first appointed by the county court, and that thereafter they are elected by the voters of the district on the first Tuesday after the first Monday in January of each year.

You are correct in concluding that, according to the case of State ex inf. West, ex rel. Thompson v. Heffernan, 138 S. W. 90, 243 Mo. 442, the electors of the commissioners of the special road district were required to be landowners of the district. However, in reading this case, we note that the road district in question was organized under Article 7, Chapter 102, R. S. No. 1909. Section 10613 of this article provides for the method of selecting the commissioners of road districts, and in part reads as follows:

"At the term of court in which the preliminary order is made, or at any subsequent term thereafter, the said court shall appoint three commissioners, who shall be owners of land within the district, who shall hold their office until the first Tuesday after the first Monday in January thereafter; and on said date the land owners in said district, at an hour and place to be fixed by said commission, shall elect three commissioners, one of whom shall serve for one year, one for two years and one for three years, and on the first Tuesday after the first Monday in January each year thereafter they shall elect a commissioner to take the place of the one whose term is about to expire, who shall serve three years. * * * *"

(Emphasis ours.)

The distinction between this section and Section 8712, R. S. Mo. 1939, supra, can be readily observed. This section used the words "land owners" in providing who should elect the commissioners, while Section 8712 employs the word "voters" in providing who shall elect the commissioners. However, Section 10613, R. S. Mo. 1909, was repealed by an act passed by

the Legislature and approved March 25, 1913, which appears in the Laws of Missouri, 1913, at Page 677. Section 10613 of this act changed the wording of the whole section by substituting the word "voters" for the words "land owners" in providing who would elect the commissioners of road districts.

Section 8712, supra, requires that the commissioners of special road districts be owners of land within the district, but it does not require that the voters within the district who elect the commissioners be owners of land. The qualification for a voter is provided in Section 11469, Laws of Missouri of 1913, Page 555, as follows:

"All citizens of the United States, including residents of soldiers' and sailors' homes, over the age of twenty-one years who have resided in this state one year, and the county, city or town sixty days immediately preceding the election at which they offer to vote, and no other person shall be entitled to vote at all elections by the people: Provided, each voter shall vote only in the township in which he resides, or if in a town or city, then in the election district therein in which he resides; Provided further, no idiot, no insane person, and no person while kept in any poorhouse at public expense, or while confined in any public prison shall be entitled to vote at any election under the laws of this state; nor shall any person convicted of a felony or other infamous crime, or of a misdemeanor connected with the exercise of the right of suffrage, be permitted to vote at any election unless he shall have been granted a full pardon; and after a second conviction of felony or other infamous crime, or of a misdemeanor connected with the exercise of the right of suffrage, he shall be forever excluded from voting. Provided, however, that the residents of the Soldiers' and Sailors' homes shall not be construed to be inmates of a poorhouse within the meaning of this section."

Hon. G. Logan Marr

-5-

If the voters of the special road district in Morgan County possess the qualifications set out in this section, they can vote for the commissioners of the road district at an election held under said Section 8712, supra.

Respectfully submitted,

RICHARD F. THOMPSON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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