

SPECIAL BENEFIT ASSESSMENT  
ROAD DISTRICT:

COUNTY COURT:

County court cannot compel  
commissioners of special benefit  
assessment road district to repair  
or maintain a particular road.

August 23, 1947

FILED  
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Honorable George P. Adams  
Prosecuting Attorney  
Audrain County  
Mexico, Missouri

Dear Mr. Adams:

This is in reply to your letter of August 19, 1947,  
requesting an opinion from this department, which reads as  
follows:

"The judges of the Audrain County Court  
have requested that I write you as to  
what, if any, authority they might have  
to direct the road commissioners of a  
special benefit assessment road district  
to maintain a particular road in their  
district.

"In other words, certain citizens in a  
particular district have complained to  
the County Court that a particular  
road is not being worked or maintained  
by the district as it should be. Does  
the County Court have any authority  
over the commissioners relative to such  
a matter?"

The sections under which special benefit assessment road  
districts are organized are Sections 8710 through 8735, Mo.  
R.S.A. Section 8710 provides:

"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 pro-  
visions 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. Districts so organized may be of any dimensions that may be deemed necessary or advisable, except that every district shall be included wholly within the county organizing it and shall contain at least six hundred and forty acres of contiguous territory: Provided, that the county courts shall not have power to divide the territory within the corporate limits of a city having a population of 150,000 into such road district."

Under this statute all such road districts are public corporations organized under the authority of the Legislature (*Embree v. Road District*, 257 Mo. 593, 166 S.W. 282; *State v. Harper*, 301 Mo. 115, 256 S.W. 469) and are considered political subdivisions of the State. In *State v. Hughesville Special Road Dist. No. 11*, 6 S.W. (2d) 594, decided by the court en banc, it was said at page 596:

"The special road district contemplated by article 8, c. 98, R.S. 1919, is 'a political subdivision of the state for governmental purposes' -- a municipal corporation. Section 10834 (Now Section 3711, Mo. R.S.A.). It is brought into existence through the exercise of legislative power. *State v. Thompson*, 315 Mo. 56, 285 S.W. 57. \* \* \* \*"

(Words in parenthesis ours.)

See also *Lamar v. Bolivar Special Road Dist.*, 201 S.W.

We submit that the county court has no authority to direct the officers of a political subdivision of a state to act in a particular manner, that is, to direct the commissioners of a special benefit assessment road district to repair and maintain a road within the district in a certain manner. This is especially true in the absence of expressed authorization in the statutes under which such legal entity was created.

After a special benefit assessment road district is organized and the commissioners appointed, the county court has very limited authority over said district, in fact the subsequent commissioners are elected by the voters of the district. However, the county court does have authority in considering protests against petitions for permanent improvements and in making orders authorizing the State Highway Department to make revised estimates of the costs of proposed improvements upon which tax bills or bonds are based, and, also, the jurisdiction to disincorporate said districts is vested in the county court.

The expression in the statutes of the above powers and authorization necessarily limits the authority of the county court to that which is set out, as it is a well-recognized rule of statutory construction that the expression of certain things is the exclusion of all others. The county court does not have general supervision over special benefit assessment road districts. It is clear that the Legislature intended the commissioners of said districts to have sole and exclusive jurisdiction over the repair and maintenance of roads within the district. Section 8714, Mo. R.S.A., 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:  
\* \* \* "

The wording of the above statutory provision is too plain to permit any other construction. It is within the discretion of said commissioners as to what roads in the district shall be repaired or improved and the manner and extent of such repair. It is beyond the province of the county court to make an order requiring said commissioners to do what the law has already declared.

In the case of Schmidt v. Berghaus, 205 Mo. 409, we find an analogous situation. A mandatory injunction was sought to enjoin the commissioners of a special road district from spending certain funds on macadam or hard surface roads until all public roads in a special road district were in good repair. The court, in that case, said at pages 413 and 414:

"As to the mandatory part of the injunction, we find that section 10,585, Revised Statutes 1909, and section 79, page 467, Session Acts of 1917, leave it in the discretion of Commissioners as to what roads in any road district shall be improved and the manner of the improvements. The evidence in the record before us fails to show that the Commissioners are acting in violation of the law or are threatening to so act. In such case it is beyond the province of a court of equity to make a special order on a defendant requiring him to do what the law has already declared. (See McLemore v. McNeley, 56 Mo. App. 556; Lester Real Estate Co. v. St. Louis, 169 Mo. 227, 69 S.W. 300.)

Therefore, the county court does not have authority to direct the commissioners of said road district to repair or maintain a particular road in that district.

#### Conclusion.

In view of the foregoing, it is the opinion of this department that the county court does not have authority to

Honorable George P. Adams

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compel the commissioners of a special benefit assessment road district to repair or maintain a particular road in that district.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General

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