

TOWNSHIP BOARDS: When a special road district is formed under Art. 18,
ROADS AND BRIDGES: Chap. 46, R.S.A., twp. bd. of trustees must deliver to
comms. of spec. rd. dist. all tools and machinery to
which dist. is entitled. Comms. of spec. rd. dist.
and twp. bd. of trustees cannot contract for redelivery
of road tools and machinery. Comms. of spec. rd. dist.
and twp. bd. cannot make contract providing twp. will
do road work in spec. rd. dist. for consideration of
taxes due spec. rd. dist. under township levy.

July 11, 1947



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Honorable Marvin C. Hopper
Prosecuting Attorney
Linn County
Brookfield, Missouri

Dear Sir:

This is in reply to your letter of recent date, requesting
an official opinion of this department, and reading as follows:

"I request an official opinion from your De-
partment on the following matters.

"In May, 1947 there was incorporated the
Purdin Special Road District comprising some-
what less than one-half of the total area of
approximately the south one-half of Benton
Township, Linn County, Missouri. The purpose
of incorporating the special road district was
to insure the voting of bonds for the purpose
of gravelling certain roads in the special
road district area.

"The Special Road District Commissioners de-
sire to enter into a contract with the Town-
ship Board of Trustees to the effect that
there shall be no division of road tools and
machinery as contemplated by Section 8840,
Revised Statutes of Missouri, 1939, because
of the impracticability thereof; that all or
any of such equipment may be used by the Town-
ship and as the Township Board of Trustees see
fit; that the Township will continue to levy
and collect taxes for road and bridge purposes
as before the date of incorporation of the spe-
cial road district; that the Township will con-
tinue to expend funds so collected in both the
township area and in the special road district
area.

"My specific questions are these--

"(1) Under Section 8840 is it mandatory that the Township Board of Trustees deliver to the Commissioners of the Special Road District all road tools and machinery to which the special road district may be entitled?

"(2) If the answer to Question No. 1 is Yes, under a contract between the Commissioners of the Special Road District and the Township Board of Trustees providing for the maintenance of roads and bridges on stipulated terms, could the Commissioners of the special road district re-deliver road tools and machinery allotted to it under Section 8840 to the Township Board of Trustees?

"(3) Can the Commissioners of a special road district contract with the Township Board of Trustees, the special road district formerly having been a part of said township, the contract providing that the special road district shall not demand any funds collected by virtue of township tax levies for road and bridge purposes and to which it is entitled, but that the same shall be retained by the township in consideration of the promise of the township to continue to expend as formerly a proportionate share of such funds for road and bridge purposes in the special road district?

"No road and bridge work is now being done in Benton Township pending receipt of answers to the above questions, and because of the emergency condition occasioned by recent flood waters, it is imperative that these questions be answered by your Department at the earliest possible time."

Section 8840, R. S. Mo. 1939, provides as follows:

"The township board of trustees shall, upon the organization of such commissioners, cause all tools and machinery used for working roads belonging to the districts and parts of districts formerly existing and composed of territory embraced within the incorporated district to be delivered to said commissioners, for which such

commissioners shall give receipt, and such commissioners shall keep and use such tools and machinery for constructing and improving public roads and bridges. The township boards shall also cause the township treasurer to pay over to the treasurer of the special road district all moneys in his hands belonging to the district or districts that have been merged into the special road district whenever the board of commissioners of such special road district shall make demand therefor. 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 ex rel. v. Wurdeman, 246 S. W. 189, l.c. 194, the Supreme Court of Missouri, in Banc, said:

" * * * Usually the use of the word 'shall' indicates a mandate, and unless there are other things in a statute it indicates a mandatory statute. * * *"

From the holding of the Supreme Court in this case, it is our opinion that the provision of Section 8840, R. S. Mo. 1939, providing that the township board of trustees shall cause all tools and machinery used for working roads belonging to the districts and parts of districts formerly existing and composed of territory embraced within the incorporated district to be delivered to said commissioners, is mandatory. It is clear that if the township board of trustees refused to deliver such tools

Honorable Marvin C. Hopper -4-

and machinery to the commissioners of the special road district, mandamus would lie to compel such delivery, unless the delivery would be physically impossible.

Since your second question inquires as to a contract that might be made if the tools and machinery were delivered, we have assumed, in answering your first question, that it is physically possible to make the delivery of such tools and machinery.

The answer to your second and third questions depends on whether or not the township board can contract with the special road district for maintenance of the roads in the special road district by the township.

In the case of *Jensen v. Wilson Township of Gentry County*, 145 S. W. (2d) 372, the Supreme Court of Missouri said at l. c. 374:

" * * * A township board functions not as a court of broad jurisdiction but as the agent of the township with limited authority. Consequently, it is even more essential that its authority be exercised in strict compliance with the powers granted to it. Such a board comes under the same rule as a county court. A county court is only the agent of the county with no powers except those granted and limited by law, and like all other agents, it must pursue its authority and act within the scope of its powers. *State ex rel. Quincy, etc., Ry. Co. v. Harris*, 96 Mo. 29, 8 S. W. 794. * * * "

Section 13933, R. S. Mo. 1939, provides as follows:

"Each township, as a body corporate, shall have power and capacity: First, to sue and be sued, in the manner provided by the laws of this state; second, to purchase and hold real estate within its own limits for the use of its inhabitants, subject to the power of

the general assembly; third, to make such contracts, purchase and hold personal property, and so much thereof as may be necessary to the exercise of its corporate or administrative powers; fourth, to make such orders for the disposition, regulation or use of its corporate property as may be conducive to the interest of the inhabitants thereof; fifth, to purchase at any public sale, for the use of said township, any real estate which may be necessary to secure any debt to said township, or the inhabitants thereof, in their corporate capacity, and to dispose of the same."

Section 13934, R. S. No. 1939, provides as follows:

"No township shall possess any corporate powers, except such as are enumerated or granted by this chapter, or shall be specially given by law, or shall be necessary to the exercise of the powers so enumerated or granted."

It is to be noted that it is provided in Section 13933 that the township has the power only "to make such contracts * * * as may be necessary to the exercise of its corporate or administrative powers." The duty of the township board with relation to roads in the township is set out in Article 17 of Chapter 46, R. S. A., and neither in Article 17 of Chapter 46 nor any other provision of the statutes of this state are we able to find any provision which places within the corporate or administrative powers of a township the maintaining of roads in a special road district organized under the provisions of Article 18 of Chapter 46, R. S. A. A special road district organized under the provisions of Article 18 of Chapter 46 is a distinct and separate entity from a township, and such special road district is given 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. Therefore, we are unable to see any reason why the making of a contract by which the township board is to maintain the roads in a special road district is a contract necessary to the exercise of the corporate or administrative powers of a township.

CONCLUSION

It is the opinion of this department that:

(1) Section 8840, R. S. No. 1939, providing that the township board of trustees shall, upon the organization of a special road district under the provisions of Article 18 of Chapter 46, R. S. A., cause all tools and machinery used for working roads formerly belonging to the territory embraced within such special road district to be delivered to the commissioners of such district, is mandatory.

(2) The commissioners of a special road district and the township board cannot enter into a contract providing for re-delivery of such tools and machinery to the township board.

(3) The township board cannot contract with the commissioners of a special road district, the contract providing that the township shall maintain the roads in the special road district in consideration of the road district's payment to the township of all tax moneys that the road district would be entitled to under a township levy.

Respectfully submitted,

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APPROVED:

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