

PROSECUTING ATTORNEYS:

Not duty of Prosecuting Attorney to advise or represent special road districts in his county.

DUTIES:

August 23, 1949

Honorable Robert P. C. Wilson, III
Prosecuting Attorney
Platte County
Platte City, Missouri

8/27/49



Dear Sir:

This is to acknowledge receipt of your letter of recent date requesting a legal opinion of this department, and reads as follows:

"We have several Special Road Districts in Platte County, Missouri, and these organizations have on several occasions requested advice and representation. I understand full well that it is my duty to advise the County Court when requested to do so. If I also advise the Special Road Districts as a part of my duty as Prosecuting Attorney, it is not unlikely that conflicts of interest may develop.

"Respectfully request the opinion of your department as to whether it is my duty to advise and represent Special Road Districts in this County, or whether these districts should employ other counsel in their difficulties."

It appears that the inquiry you have made concerning the duties of the prosecuting attorney may be summarized as follows: Whether or not it is your official duty as prosecuting attorney to give legal advice to, and to represent the various special road districts in your county in civil matters.

Section 12944 R. S. Mo., 1939, outlines the general duties of the prosecuting attorney regarding civil matters and reads as follows:

"He shall prosecute or defend, as the case may require, all civil suits in which the county is interested, represent generally the county in all matters of law, investigate all claims against the county,

draw all contracts relating to the business of the county, and shall give his opinion, without fee, in matters of law in which the county is interested, and in writing when demanded, to the county court, or any judge thereof, except in counties in which there may be a county counselor. He shall also attend and prosecute, on behalf of the state, all cases before justices of the peace, when the state is made a party thereto: Provided, county courts of any county in this state owning swamp or overflowed lands may employ special counsel or attorneys to represent said county or counties in prosecuting or defending any suit or suits by or against said county or counties for the recovery or preservation of any or all of said swamp or overflowed lands, and quieting the title of the said county or counties thereto, and to pay such special counsel or attorneys reasonable compensation for their services, to be paid out of any funds arising from the sale of said swamp or overflowed lands, or out of the general revenue fund of said county or counties."

Section 12947, R.S. Mo., 1939, provides that it shall be the duty of the prosecuting attorney to give his opinion on any matter of law to the officers mentioned in the section, free of charge, upon request, said section reads as follows:

"The prosecuting attorney shall, without fee, give his opinion to any justice of the peace, and to any county court, or to any judge thereof, if required, on any question of law in any criminal case, or other case in which the state or county is concerned, pending before such court or officer."

Under the provisions of section 12944, supra, it is the duty of the prosecuting attorney to prosecute or defend all civil suits in which the county is interested, and to represent the county generally in all matters of law. He is required to investigate all claims against the county and draw all contracts

relating to the county business. Upon request, and without fee, he is to give his opinion on matters of law relating to the county business, to the county court or any judge thereof, except in those counties where such duties are performed by a county counselor. He is further required to attend and prosecute on behalf of the state all cases pending before a justice of the peace, when the state is made a party thereto. In regard to the last mentioned duty it is noted that the term "justice of the peace," or "justice of the peace court" is now obsolete and that since the Constitution of 1945, and also Acts of the Legislature of that year, magistrate courts have been created to replace the justice of peace courts existing under the former law. That under the provisions of Section 1, page 1079, Laws of 1945, whenever the word "justice and justice of the peace" appear in any statute such words shall hereafter be deemed to include and refer to "magistrate," unless something in the subject or context be repugnant to such construction. Substituting the word "magistrate" for that of "justice" in said Section 12944, we find that it becomes the duty of the prosecuting attorney to attend and prosecute on behalf of the state all cases pending before the magistrate when the state is made a party thereto.

Under the provisions of Section 12947, supra, the prosecuting attorney shall upon request give his written opinion to the county court or any judge thereof on any question of law, or to any magistrate judge regarding any questions of law that arise in any proceeding before such magistrate, in which the county or state is interested. We believe this section of law is self-explanatory and we will not discuss it except to say that in our opinion this section cannot be interpreted to mean that the prosecuting attorney is required to give his opinion to any special road district even though requested so to do nor is he required to represent such district in any proceeding before a magistrate court in his county.

This section makes it the duty of the prosecuting attorney to advise the county court on all matters of law in which the county is interested. It is also his duty to represent the county generally whether such matters originate in or out of court, but we are unable to find anything in this section requiring him to represent the various special road districts of his county. It does not follow that the interests

of any such districts would constitute county business, or matters in which the county as a whole would be interested within the meaning of the statute. In making this law the legislature might have made it the duty of the prosecuting attorney to advise and represent such districts in his county, but since these duties have not been written into this section, we are of the opinion that the prosecuting attorney is under no obligation and that the giving of advice or his representation of such special road districts is no part of his official duties. We believe that our contention that the prosecuting attorney is not required to advise or represent any of the special road districts of his county is upheld by the ruling in the case of State ex rel Wammack and Welborn v. Affolder, 257 S.W. 493, 214 Mo. App. 500.

In this case the county court had employed the attorneys for the plaintiff to perform certain legal services in connection with a bond issue in Duck Township in said county. The county treasurer refused to honor the warrant given the attorneys in payment for their services to the township on the ground that it was the duty of the prosecuting attorney of that county to advise or represent the township in its legal matters, and that such duties were enjoined on the prosecuting attorney by law.

While the court in its opinion dealt with those statutes relating to the duties of the prosecuting attorney, and was chiefly concerned with the proposition as to whether it was the prosecuting attorney's duty to represent the township under above-mentioned facts it also passed upon the proposition as to whether or not it was the prosecuting attorney's duty to represent the special road district of his county. It is interesting to note that the court held that it was not the prosecuting attorney's duty to represent or advise the township in question and also that it was not his duty to advise or represent the special road district of his county. Said opinion reads as follows:

"Was it the duty of the prosecuting attorney to render the services which plaintiffs rendered? Sections 736 and 738 prescribe generally the duties of the prosecuting attorney. There is nothing in these sections which may be said to place upon the prosecuting attorney the duty of looking after this bond issue. There are other sections prescribing duties in particular cases, but the sections, supra, cover the field generally.

The bond issue of Duck Creek township was not a matter of county wide concern. It was a matter that affected that township only. The Act of 1917 provided that in a township bond issue thereunder the county court shall act for the township. The only recognition of township organization is that the act provides in section 10750 that the proceeds of the bond sale be turned over 'to the treasurer of the district or the county or township, as the case may be.' In the reference quoted, and in section 10748, it will be seen that, not only was township organization taken into account, but also special road districts organized under sections 10800 et seq. and sections 10833 et seq. R.S. 1919. Neither the act of 19017, nor the Special Road District Acts, makes it the duty of the prosecuting attorney to advise or render service. There is nothing in the Township Organization Act (section 13164 et seq., R.S. 1919) which makes it the duty of the prosecuting attorney to render the service rendered here by plaintiffs. * * *"

257 S.W., 1.c. 494-495

CONCLUSION

It is therefore the opinion of this department that it is the duty of the prosecuting attorney to advise the county court or any of the judges thereof on any matters of law pertaining to the county's business, and that he shall also advise the judges of the magistrate courts in his county in all matters pending therein in which the county or state is interested, and to give his written opinion without fee when requested by said officials. It is the further duty of the prosecuting attorney to represent the county generally, in all matters in which the county is interested, and to attend and represent the state in all cases pending before magistrate courts in his county in which the state is made a party.

Hon. Robert P. C. Wilson, III 6.

It is the further opinion of this department that it is not the duty of the prosecuting attorney to give advice or to represent any of the various special road districts of his county.

Respectfully submitted,

PAUL N. CHITWOOD,
Assistant Attorney General

APPROVED:

J. E. TAYLOR
ATTORNEY GENERAL

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