

SPECIAL TOWNSHIP ROAD DISTRICTS:
REPORTS AND SETTLEMENT:

The commissioners of special road districts in counties under township organization shall make and file annually with the township board of directors a detailed report and settlement of all monies received and expended by them.

October 30, 1950

11-9-50



Mr. Joe C. Welborn
Prosecuting Attorney
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Bloomfield, Missouri

Dear Sir:

I.

We have received a request from you for an official opinion upon the question of whether or not special road districts in counties under township organization are required to file reports or publish financial statements. Your letter reads as follows:

"I am unable to find any provision of the statutes requiring Special Road District Boards in Counties under township organization to file an annual financial statement with the County Clerk. I am aware that section 24 of Article 6 of the Constitution contemplates such a statement. However, that section says that such a statement or settlement must be made, as required by law, and I suppose that a legislative enactment is necessary to actually require such a settlement.

"Section 8699, Laws 1945, page 1494, provides for such a settlement, if that section applies to counties with township organization. That section is a part of article 10, which does not seem to apply to counties with township organization. However, section 8691, which was reenacted in 1945 at the same time that section 8699 was reenacted, seems to refer to all special road districts, and I am wondering if these two sections, read together, might make section 8699 apply to counties with township organization.

"I will appreciate an official opinion from your department as to whether Special Road District Boards, in Counties under Township Organization

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are required to file an annual itemized statement with the County Clerk. And I would further appreciate an official opinion as to whether or not such statement can be valid, if attested by only two members of the board, neither of whom is the secretary."

II.

Sections 8699 and 8691, Laws Missouri, 1945, pages 1494 and 1495, referred to in your letter, and part of the article and chapter of the Revised Statutes of Missouri, 1939, dealing with special road districts in counties not under township organization. Section 8673, Laws 1945, page 1494, is a reenactment of Section 8673 of Article X of Chapter 46, R.S. Mo. 1939. This section provides as follows:

"Territory not exceeding eight miles square, wherein is located any city, town or village containing less than one hundred thousand inhabitants, may be organized as herein after set forth into a special road district; Provided, however, the provisions of this section shall not apply to counties under township organization or to class one counties."

This section has been incorporated into the 1949 Revised Statutes, Missouri, as Section 233.01.

Sections 8691 and 8699, supra, have been incorporated in the 1949 Revised Statutes, under Chapter 233 dealing with special road districts in certain counties not under township organization. It is clear to us that it was not the intention of the Legislature to have said sections apply to special road districts in counties under township organization.

It is true that section 24 of Article VI of the Constitution of 1945 requires annual reports by all the legal subdivisions of the state. This section reads as follows:

"As prescribed by law all counties, cities, other legal subdivisions of the state, and public utilities owned and operated by such subdivisions shall have an annual budget, file annual reports of their financial transactions, and be audited."

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But the section is not self-enforcing because of the clause "as prescribed by law."

You will find in 46 C.J., page 1041 the following statement:

"Where the constitution provides that an accurate and itemized statement of receipts and expenditures of public money shall be published annually in such form as the legislature shall provide, it is only after the legislature acts, and then only as it prescribes time, place, and manner, that there is any enforceable duty on officers or boards receiving and disbursing public funds to make reports or statements thereof. * * *"

Section 8340, R.S. Mo. 1939, which will be Section 233.34 R. S. Mo. 1949, provides among other things that:

"* * *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; * * *"

(Underscoring ours.)

Section 8817, R.S. Mo. 1939, which will be Section 233.47, R. S. Mo. 1949, provides as follows:

"It shall be the duty of every road overseer to make a detailed report and settlement, under oath, to the township board at each regular meeting thereof, and on or before the twentieth day of March next after his appointment he shall make final report, under oath, of all moneys received and expended by him, and from what source received and on what account expended, and final report of the disposition of all tools, machinery, books, papers and other property received by him as such overseer and belonging to such township or road district, and shall settle in full with said board for all moneys which he may have belonging to such road district or which may be owing by him to such district, and shall

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deliver to said board all tools, machinery, books, papers and other property belonging to such township or road district and received by him as such overseer."

By virtue of Section 8817, R. S. Missouri, 1939, quoted above, we find that road overseers appointed in counties having township organization are called upon for a strict accounting of all funds coming into their hands and such accounting is made to the township board of directors, the authority appointing such road overseers. Since right and duty are correlative terms, the board of commissioners of a road district formed under Article 18 of Chapter 46, R. S. Missouri, 1939, when given the power, rights and authority of road overseers, are thereby obligated to perform the duties of road overseers which require a reporting and accounting of funds coming into their hands.

Volume 13, Words and Phrases, page 708, cites from cases, which hold that where power and authority or power and right is granted by the Legislature to any official or public corporation such a grant carries with it duty and obligation, as follows:

"It was said in *City of Baltimore v. Marriott*, 9 Md. 160, 66 Am. Dec. 326, that it is a well-settled principle that when a statute confers a power upon a corporation to be exercised for the public good, the exercise of the power is not merely discretionary, but imperative; and the words "power and authority" in such case may be construed "duty and obligation." *Magaha v. City of Hagerstown*, 61 A. 832, 835, 95 Md. 62, 93 Am. St. Rep. 317.

"A provision in the charter of a town that the mayor and council should have 'power and authority' to pass ordinances for the comfort, good order, health, and safety of the inhabitants, is held not merely to confer power to pass such ordinances, but to make it imperative to do so; the words 'power and authority' being construed as equivalent to 'duty and obligation.' *Cochrane v. City of Frostburg*, 31 A. 703, 705, 81 Md. 54, 27 L.R.A. 728, 48 Am. St. Rep. 479."

Volume 50, Am. Jur. Sec. 381, page 393, states:

"In the interpretation of a statute, it is not to be presumed that the legislature intended to endanger or sacrifice great public interest.

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Indeed, a purpose to disregard sound public policy must not be attributed to the law-making power, except upon the most cogent evidence, and it is the duty of the courts to render such an interpretation of the laws as will best promote the protection of the public, in so far as this may be accomplished in accordance with well established rules of construction. Where a statute is ambiguous, courts interpreting the same may give consideration to the necessities of public welfare, policy, or interests, and where one construction of the statute will lead to public mischief which another construction will avoid, the latter is favored. * * *

We have cited the constitutional provision requiring all legal subdivisions of the state to file annual reports of their financial transactions. This constitutional provision constitutes public policy in regard to the making of reports by legal subdivisions of the state.

CONCLUSION

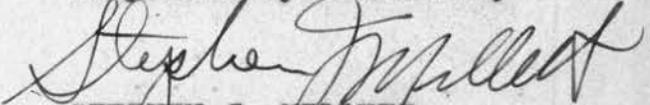
It is the conclusion of this department that the commissioners of special road districts in counties under township organization are not required to file an annual itemized statement with the county clerk of the county in which they are located, but they are required to make an annual detailed report and settlement, under oath, to the township board of directors of the township in which said district is located of all monies received and expended by them. This report and settlement will be published by the township board as part of their annual report, as provided by law.

APPROVED:


J. E. TAYLOR
Attorney General

SJM:mv

Respectfully submitted,


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