

SPECIAL ROAD DISTRICT:
WARRANTS: COMMISSIONER'S
POWER TO ISSUE:

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where

Special road district commissioners of non-township organization county issue a warrant on the county treasurer for all district's funds; deposit proceeds in a bank and issue checks for district's obligations. Commissioner's actions illegal and violates Sec. 233.185 RSMo 1949, as custody cannot be changed from treasurer. Commissioners elected or appointed under Sec. 233.180 RSMo 1949, do not forfeit office, hold to end of term. Commissioners not guilty of crimes under any Missouri statutes.

April 8, 1952

4-9-52

Honorable James L. Paul
Prosecuting Attorney of
McDonald County
Pineville, Missouri

Dear Sir:

Your recent request for a legal opinion of this office has been received and reads as follows:

"Please furnish this office with an opinion covering the following questions:

"Section 233.185 of the Revised Statutes of the State of Missouri, provides that the Treasurer of the County is the official Treasurer of a special road district organized under a non-township organization, and is authorized to pay warrants when duly signed by the designated members of the commission.

"Where a warrant is drawn for the lump sum and the County Treasurer acknowledges said warrant and said lump sum is then redeposited in a banking institution, against which sum the commission issues checks in payment of obligation, is such action the violation of the provisions of the above section?

"If such is a violation of the above section, upon proper showing, are the officer's issuing

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said warrants disqualified from further serving and/or is the County Treasurer liable for proper accounting of said lump sum so drawn?

"In the event that such is a violation of the provisions of the above quoted section, does such constitute a criminal act?

Section 233.185, RSMo 1949, provides how the commissioners of a special road district, in a non-township organization county shall organize, and also provides how the funds of the district shall be kept, and how paid out. Said section reads as follows:

"1. The commissioners so appointed and qualified shall meet at such a time and place within such district as may be fixed by the county court at the time of appointing them, or as they may in writing agree upon, and shall organize by electing one of their number president, another vice-president and another secretary; provided, that by a unanimous vote of said commissioners any person not a member of said board may be chosen secretary.

"2. Meetings of said commissioners shall be held thereafter at such time and place as they may agree upon in writing, or the president or vice-president may order. The treasurer of said board shall be the county treasurer, and he shall be responsible on his bond for the faithful keeping of all moneys deposited with him by reason of this law. The president of the board shall preside at all meetings thereof; he shall sign the minutes and records of the board, and all warrants that may be drawn upon the treasury for the payment of any money out of the treasury on account of the funds belonging to said district, and exercise a general supervising control over the work of such commissioners, and in a general way may do all the acts and things that the said board may empower him to do, and such others as may be authorized by law. During absence of the president from the county, or from any meeting of the board, the vice-president shall perform the duties herein conferred upon the president.

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"3. The secretary shall carefully keep a true record of all warrants drawn on the treasurer and all written contracts that may be entered into on behalf of the district, shall attest such warrants and the execution of such contracts, keep minutes of meetings of the board, and perform such other duties as the law may require. All money paid to the county treasurer and placed to the credit of the district shall be paid out only on warrants signed by the president or vice-president and attested by the secretary, except as may be otherwise authorized by law."

It is noted that this section provides that all the funds of the district shall be kept in the county treasury and can only be paid out by warrants of the commission on the treasurer, and that said warrants must be signed by the president or vice-president and secretary, and it is with this phase of the statute that your inquiry deals.

You fail to give the facts in detail in your letter, but from those given we assume that a warrant of the commissioners of the special road district was issued in accord with the provisions of above section, on the county treasurer, and that the proceeds of the warrant were deposited in a bank account in the name of the district, and that checks were only written on said account to pay the obligations of the district.

We interpret your inquiry to be whether the action of the commissioners in issuing the warrant for the total amount of funds in the county treasury, and redepositing the proceeds in a bank and issuing checks on the account for the district's obligations is a violation of Section 233.185, supra. In other words did the commissioners violate this section when they changed the custody of the district's funds from the county treasurer to the bank?

Before attempting to discuss this matter further and reaching a conclusion herein, we call attention to the case of Special Road District No. 4, et al. v. Cantley, 223 Mo. App. 89. The facts and principles of law involved here are very similar to those in the present case, and we quote a part of the opinion found at l. c. 92, in which the court said:

"Whether or not the common-law doctrine could be invoked by a political subdivision of the State so as to entitle it to a preference, in the absence of statute, is

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questionable. However that may be, in the case at bar there is a statute relied upon by both plaintiff and defendant as upholding their respective theories. Section 10836, article 8, chapter 98, Revised Statutes 1919, relating to special road districts, provides for the organization of the board of commissioners. It further provides that, 'The treasurer of said board shall be the county treasurer, and he shall be responsible on his bond for the faithful keeping of all moneys deposited with him by reason of this law. All money paid to the county treasurer and placed to the credit of the district shall be paid out only on warrants signed by the president or vice-president and attested by the secretary, except as may be otherwise authorized by law.' Defendant asserts that under the terms of this statute the board of commissioners has authority to draw warrants on the funds of the road district and, no provision being made for a depository, it was not illegal for the commissioners to make the deposit in question. Under the agreed statement of facts it appears that what the road commissioners actually did was to transfer the sum of two thousand dollars from the county treasurer (the officer named by the statute as custodian of the funds of the road district), to the account of the special road district, by drawing a warrant in proper form payable to the Bank of Louisburg and depositing same to the credit of the special road district. The authority of the commissioners to draw the warrant cannot be successfully denied. That authority is conferred by the statute referred to. But the commissioners certainly have no authority to draw warrants on the county treasurer for the purpose of making another person or institution custodian of the funds of the district. Such an act would nullify the statute. The evident purpose of the law is to protect the funds of the district by making the county treasurer responsible, under bond, for the faithful keeping of all moneys deposited with him. When moneys are taken from his hands they no longer have that protection. No other person or persons had the right to make deposits for the special road

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district. If the warrant as drawn was the property of the road district the county treasurer automatically became the sole lawful custodian thereof. It is conceded the warrant drawn in favor of the Bank of Louisburg did not transfer any beneficial interest to that bank, but the proceeds of the warrant continued to be moneys belonging to the district. The only fair inference is that the object of the transaction was to take the district's money from the hands of the county treasurer and place it in a separate account over which he had no control. This was an unlawful act and created a trust ex maleficio. The defendant is charged with knowledge of the terms of the statute. Under such circumstances the relation of debtor and creditor was not created and plaintiff had the right to recover its property from the insolvent bank of the commissioner. * * *

It was pointed out in the above quoted portion of the court's opinion that the commissioners had the power to issue warrants on the county treasurer and to order their payment out of any funds in his hands to the credit of the district, but that the commissioners had no authority to issue a warrant for the total amount of the district's funds and to redeposit said funds in a bank and thereby make another person or institution the custodian of said funds. The county treasurer is the officer who has a right to make deposits and to keep the district's funds, under the statute, and he is responsible on his bond to faithfully keep said funds.

Section 233.185, supra, makes the county treasurer the only custodian of the special road district's funds referred to in the opinion request, and for which funds he is bound to faithfully keep and account for, under the conditions of his official bond. Under this section it is his duty to pay all warrants legally issued by the commissioners from any funds of the district in his hands, in the manner provided by law.

It is further noted that under the provisions of Section 233.185, supra, and the ruling in the case of Special Road District No. 4 v. Cantley, supra, the commissioners have the power to issue warrants for the obligations of the district, but lack the power and cannot legally issue a warrant for the total amount of the district's funds in the treasurer's hands, and then deposit the proceeds in a bank to the credit of the district, thereby changing the custody of said funds from the county treasurer to a bank.

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Therefore, in answer to your first inquiry it is our opinion that the commissioners were without power to issue the warrant for the total of the district's funds, and to change the custody of said funds from the legal custodian to a bank, and that their action in so doing was a violation of Section 233.185, supra.

Section 233.180, provides how the commissioners of a special road district are selected and reads as follows:

"1. 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 fixed 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.

"2. No person shall be elected or appointed commissioner who is not a resident of the district and an owner of land in the district. Any vacancy caused by resignation, death, removal from the district of a commissioner or sale of all land owned by him in the district shall be filled for the unexpired term by election by the voters of the district. All commissioners shall qualify by taking, subscribing and filing with the county clerk the oath prescribed by the constitution of this state, and that they will faithfully, honestly and impartially discharge their duties as commissioners according to law.

"3. If for any reason the board of commissioners herein mentioned shall fail to call an annual or other prescribed election to fill a vacancy or vacancies caused by the expiration of the term of any one or more of the commissioners, then the county court is hereby authorized and required to

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call an election to fill said vacancy and to fix the time therefor within fifteen days after making the order for such election."

This section does not provide that a commissioner of a special road district shall forfeit his office after he has participated in the act of illegally changing the custody of the district's funds under the same or similar circumstances referred to above. A forfeiture of the office cannot be implied, and such commissioners will continue to serve in their official capacities until the end of the terms for which they were elected or appointed under the provisions of above quoted section, consequently, our answer to your second inquiry is in the negative.

Your last inquiry is whether the violation of the provisions of above section (233.185, supra), constitutes a criminal act.

Section 556.010, RSMo 1949, defines the terms "crime" and "criminal offense", and reads as follows:

"The terms 'crime', 'offense,' and 'criminal offense,' when used in this or any other statute, shall be construed to mean any offense, as well misdemeanor as felony, for which any punishment by imprisonment or fine, or both, may by law be inflicted."

From the reading of this section it appears that a crime can only be an offense defined as a felony or misdemeanor by statute, and for which some punishment has been provided for its violation, since there are no "implied crimes," in Missouri.

It appears that no section makes it a crime to violate the provisions of Section 233.185, supra, or to illegally change the custody of a special road district's funds from the county treasurer to another officer, person or institution. Therefore, in answer to your last inquiry, it is our opinion that the commissioners of the special road district cannot be prosecuted and punished for their illegal actions, since said actions have not been defined as crimes under the provision of any Missouri statute.

CONCLUSION

It is therefore, the opinion of this department that in a non-township organization county when the commissioners of a special road district issue a warrant for the total amount of all funds in

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the county treasury to the credit of the district; deposit the proceeds in a bank and write checks upon the deposit in payment of the district's obligations; the action of the commissioners is illegal and a violation of Section 233.185, RSMo 1949. Said section does not authorize the commissioners to change the custody of the district's funds from the county treasurer, who has been designated the lawful custodian, to any other officer, person, or institution. The commissioners were elected or appointed under the provisions of Section 233.180, RSMo 1949, and will continue in office until the end of the terms for which they have been elected or appointed, since said section does not provide that when commissioners are guilty of illegally changing the custody of the funds of their district, they shall forfeit their offices.

It is the further opinion of this department that under the above mentioned circumstances, the illegal actions of the commissioners, do not constitute crimes, since no criminal statutes of Missouri, define said actions to be criminal offenses.

Respectfully submitted,

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Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney General

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