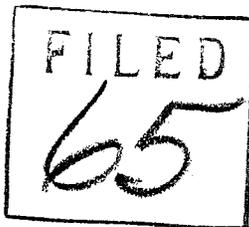


SPECIAL ROAD DISTRICTS: Last board of trustees of eight-mile special road district winds up affairs of district upon dissolution.



May 25, 1954

Honorable Charles E. Murrell, Jr.
Prosecuting Attorney
Knox County
Edina, Missouri

Dear Sir:

We have received your request for an opinion of this office, which request is as follows:

"I would like to have an opinion from your office concerning the road equipment, personal property and debts of a Special Road District in answer to the following questions:

(1) What disposition and the authority therefor, is to be made of the road machinery, equipment and personal property of a Special Road District upon dissolution of the district?

(2) What disposition is made of the debts of a Special Road District upon dissolution?

(3) What is the procedure to be followed for payment of the debts of a Special Road District upon dissolution?

"The debts referred to are outstanding debts for supplies and equipment and the district does not have any bonded indebtedness."

You have informed us that the special road district in question was organized under Section 233.010 - 233.165, RSMo 1949. Section 233.160 provides for the dissolution of such special road districts. That section reads as follows:

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"1. If any district shall have adopted the provisions of sections 233.010 to 233.165 the question may be resubmitted after the expiration of four years upon the petition of fifty resident taxpayers of said district at the next general election, or at a special election to be held for that purpose at such time as the county court may order.

"2. The county court shall give notice of such election and of such submission by publishing the same in some newspaper published in the county, such notice to be published for two consecutive weeks, the last insertion to be within five days next before such election; and such other notice may be given as the court may think proper.

"3. The county court shall have the ballots for such election printed and shall have printed on such ballots 'For the disorganization of the special road district,' 'Against the disorganization of the special road district,' with the direction 'Erase the clause you do not favor.' If a majority of the votes upon such proposition be cast against it, said district shall be disincorporated and the operation of the law shall cease in said district. In all other respect said election, and the results thereof, shall be governed by the provisions of sections 233.010 to 233.165."

Section 233.165 provides for the levy of a tax to pay the bonded indebtedness of such dissolved road district. Otherwise, the statutes are silent as to the procedure to be followed upon dissolution. The Legislature has provided the procedure to be followed upon dissolution of a special benefit assessment road district (Secs. 233.290 - 233.315, RSMo 1949), but has not seen fit to enact similar legislation for a district such as here involved.

In view of the absence of any statutory provision, it is our opinion that it is the duty of the last board of trustees of the district to wind up the affairs of the district in such manner as will protect the interest of all concerned.

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As for the disposition of the property, Section 233.090, RSMo 1949, provides:

"Said board shall sell any property of such district, on such terms as it may deem proper, when same can no longer be profitably used for road work."

In view of the authority conferred upon the board of trustees by this section, it is our opinion that upon dissolution of the district the board would have authority to sell the machinery and property belonging to the district and to use the proceeds in payment of any outstanding obligation to the district. Should the board have machinery and other personal property which cannot be sold, it is our opinion that such property and machinery should, upon winding up of the dissolution, be turned over to the county court.

As for the disposition of the debts of the road district other than bonded indebtedness, we presume that the indebtedness to which you refer has been legally incurred in accordance with Section 233.135, RSMo 1949. That section provides:

"Such board may issue warrants on the treasurer of the board in payment of the expenses and obligations which the board are authorized to incur in behalf of such special road districts and such warrants may be issued in anticipation of the income and revenue provided for the year for which the debt or obligation for which the warrant is issued was incurred; but such districts or such board on behalf thereof shall not purpose to an amount exceeding in any one year the income and revenue provided for such year; provided, however, that this shall not prevent the incurring of indebtedness under bond issue as is or may be provided by law."

Any indebtedness which is within the limits of the anticipated revenue for the year in which the indebtedness was incurred is a valid obligation of the district and should, of course, be paid. Should the indebtedness not have been incurred in conformance with Section 233.135 and Section 26(a) of Article VI of the Constitution of Missouri, 1945, such indebtedness is void and not a binding obligation of the district. *Barnard and Co. v. Knox County*, 105 Mo. 382.

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We are of the opinion that such debts should be paid in the usual manner by the treasurer of the last board of trustees. For such payment he may use any funds which come into his hands from sale of the property of the district, as above discussed. Should the district have voted the special tax authorized by Section 137.565, RSMo 1949, for the year of dissolution, that tax should be levied and collected for such year and the proceeds turned over to the district treasurer, inasmuch as the proceeds of such tax would have been taken into consideration in estimating the revenue of the district which was the basis for the incurring of the obligations. The county court should also turn over to the treasurer any funds to which the district might be entitled under Section 233.125, RSMo 1949.

Upon the payment of the outstanding obligations, any balance in the hands of the district treasurer should be paid into the county treasury and a settlement made with the county court in accordance with Section 233.150, RSMo 1949.

CONCLUSION

Therefore, it is the opinion of this office that upon the dissolution of a special road district organized under the provisions of Sections 233.010 - 233.165, RSMo 1949, the last board of trustees of such district should proceed to wind up its affairs and for such purpose may sell road machinery, equipment and personal property of the district and apply the proceeds of such sale in payment of outstanding obligations of the district. We are further of the opinion that outstanding obligations of the district which have been legally incurred should be paid by the treasurer of such road district in the usual manner.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Robert R. Welborn.

Yours very truly,

JOHN M. DALTON
Attorney General.

RRW:ml