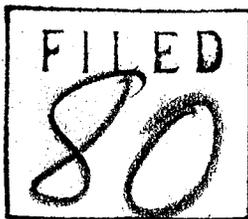


ROADS:
FOURTH CLASS, NON-
TOWNSHIP ORGANIZA-
TION COUNTIES:
SPECIAL BENEFIT
ASSESSMENT DISTRICTS:
COMMISSIONERS'
POWERS:



County Court of fourth class non-township organization county can employ county highway engineer by following procedure provided by Section 61.160 RSMo Cumulative Supplement 1953. Attempted action of county court of such class county to employ an engineer by contract and pay compensation other than that authorized by section is void. Board of Commissioners of special benefit assessment road district of non-township organization county, organized under provisions of Secs. 233.170 to 233.315 RSMo 1949, is authorized on behalf of district, to receive any funds which may be paid by Federal Government as damages to district's roads.

May 16, 1955

Honorable Rufe Scott
Prosecuting Attorney
Stone County
Galena, Missouri

Dear Mr. Scott:

This department is in receipt of your recent request for a legal opinion upon the two questions presented in your letter. Said request reads, in part as follows:

"Stone County is in the IV Class and we have no Highway Engineer.

"I am enclosing a contract entered into by the County Court with one L. A. Wilson, an engineer, for your examination and consideration.

"A number of public roads will be vitally effected by the lake and I understand the U. S. Corps of Engineers will either relocate and rebuild the roads or pay the County damages and thereby furnish the money for the County authorities to relocate and build the roads. From this contract I take it that the County Court intends to collect and build the roads under the supervision of this engineer under this contract. This is to be done without a legal Highway Engineer as the law provides.

"Please advise me as to whether or not the court can dispense with the County

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Highway Engineer and legally contract with an engineer and pay such engineer 10% of the road and bridge money collected in such case?

"Please advise me as to whether or not the Special Road district in which about all such roads are located is entitled to the money and whether or not such roads should be located and built by the commissioners of such special road district?"

* * * * *

The second question states that practically all the roads referred to are located in a special road district, and seems to indicate that some of the roads referred to are located outside the special road district. Not being advised as to the kind of special road district, we requested you to give us this information and your reply reads, in part, as follows:

"The special road district is a benefit Assessment District organized under Sections 233.170 to 233.315, the County is not under township organization."

Section 61.160, RSMo Cum. Supp. 1953, authorizes the county court of second, third and fourth class counties to appoint a highway engineer, and reads as follows:

"The county courts of such county in this state in classes two, three and four are hereby authorized and empowered to appoint and reappoint a highway engineer within and for their respective counties at any regular meeting, for such length of time as may be deemed advisable in the judgment of the court. The provisions of sections 61.170 to 61.310 shall apply only to counties of classes two, three and four."

The appointment of a highway engineer in any second, third or fourth class county has been provided for by Sec-

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tion 61.160, supra. It is noted that the employment of such engineer by contract has not been authorized by said section and the county court can employ an engineer only when it follows the procedure authorized by the section.

In reality it appears that the county court of Stone County (a fourth class county) has attempted to employ a professional engineer to act as county highway engineer and to pay him the compensation specified in the proposed contract. Needless to say the means thus adopted and the compensation to be paid are different from that provided by Section 61.160, supra, consequently, they are unauthorized by said section.

We enclose a copy of an opinion of this department rendered to the Honorable Roderic R. Ashby, Prosecuting Attorney of Mississippi County, Missouri, on January 18, 1949. Said opinion discusses the authority of the county court to employ someone other than the regularly appointed highway engineer to serve in that capacity, which opinion is believed to be in support of our discussion given above.

Therefore, in answer to the first inquiry of the opinion request, it is our thought that any action taken by the county court of Stone County in the employment of a county highway engineer and the proposed contract of employment, between the engineer and county are void.

The second inquiry asks if the special road district referred to is entitled to receive any funds which may be paid by the Federal Government as damages to the roads of the special district.

Section 233.190, RSMo 1949, provides what authority the commissioners of the special benefit assessment road district shall have and reads as follows:

"1. The county court shall upon the organization of such commissioners, cause all tools and machinery used for working roads belonging to the districts formerly existing and composed of territory embraced within the incorporated district to be delivered to said commissioners, for which such commissioners shall give

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a receipt, and such commissioners shall keep and use such tools, and machinery for constructing and improving public roads and bridges.

"2. 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 such commissioners may prescribe."

In this connection we call attention to Section 231.100, RSMo 1949, which authorizes certain officials to make settlement for damages with the proper parties when any roads, other than the State highways, have become or will become inundated by reason of the building of any hydroelectric projects. Said section reads as follows:

"Whenever the construction or operation by any person, firm, corporation or association of any power, or a hydroelectric project results in the inundation of roads other than state highways, the county court or proper officers of

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the political subdivision, having jurisdiction of such roads, are hereby authorized to make settlement therefor, and all money received therefrom shall be placed to the credit of the road fund of such county or political subdivision as the case may be."

While this section specifically refers to hydroelectric projects and governs the procedure in the instances referred to, it is believed that this section is by analogy applicable to the facts referred to in the opinion request since the same principles of law are involved.

In view of the foregoing, it is believed that Section 233.190, supra, and the other sections quoted above pertaining to the power of the commissioners of the special road district, authorize the commissioners to enter into negotiations with the Federal Government for damages to the district's roads as referred to in your letter, and that the commissioners would be authorized, on behalf of the district, to receive any funds paid in settlement of damages to such roads by the Federal Government.

CONCLUSION

It is the opinion of this department that the county court of a fourth class, non-township organization county, can employ a county engineer by following the procedure provided by Section 61.160, RSMo Cumulative Supplement 1953. The attempted action of a county court of a county of this class to employ a highway engineer by means of a proposed contract to be entered into by the court and the engineer, by which a compensation other than that provided by Section 61.160, RSMo Cumulative Supplement 1953, is to be paid, is unauthorized. The action of the court as well as the proposed contract is void.

It is further the opinion of this department that the commissioners of a special benefit assessment road district of a non-township organization county, organized under provisions of Sections 233.170 to 233.315, RSMo 1949, are author-

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ized under said statutory provisions, to receive, on behalf of their district, any funds which may be paid by the Federal Government as damages to the district's roads.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. Paul N. Chitwood.

Yours very truly

JOHN M. DALTON
Attorney General

Enc.

PNC:ma:lc