

- SPECIAL ROAD DISTRICTS: (1) Special road districts in county under township organization may be formed under the provisions of Secs. 233.320-233.445, RSMo 1949.
- TOWNSHIP ORGANIZATION: (2) Duties of county court in such county with respect to petition for formation of such special road district.



May 26, 1955

Honorable Jimmie B. Trammell
Prosecuting Attorney
Stoddard County
Bloomfield, Missouri

Dear Sir:

Reference is made to your request for an official opinion of this department reading as follows:

"I have been instructed by the County Court of Stoddard County, Missouri, to request an opinion from your office on the following questions, to-wit:

"1. In a County operating under Township form of organization in which the townships have been organized into General Road Districts, may such General Road Districts be divided into Special Road Districts under the provisions of Chapter 233, V.A.M.S., 1949, or may a Special Road District be set up within said General Road District?

"2. If the answer to the above question is in the affirmative, then does the County Court have any discretion in the formation of a Special Road District when a Petition for its formation is filed with the County Court, signed by a majority of the resident landowners within said proposed Special Road District, owning more than half the acreage within said proposed Special Road District, and may the County Court consider any remonstrance other than that signed by resident landowners within the proposed Special Road District?

"This problem arose in the County Court of

Honorable Jimmie B. Trammell

Stoddard County when a Petition was filed in said Court for the formation of a Special Road District comprised of parts of Castor and New Lisbon Townships of Stoddard County, which are now General Road Districts and more than 300 residents of said Townships filed remonstrances with the County Court, stating that the formation of this Special Road District within said General Road Districts would so curtail their revenue that they could no longer function as General Road Districts.

"We would appreciate a prompt reply, as the County Court must render their decision on this matter in the near future."

A complete scheme for the formation of special road districts and for benefit assessments in connection therewith in counties operating under township organization form of government has been provided under the provisions of Sections 233.320 to 233.445, RSMo 1949. In your opinion request you refer to "General Road Districts" as having been formed in the various townships of the county. Such action has no doubt been taken by the respective township boards of directors pursuant to the authorization contained in Section 231.160, RSMo 1949, reading in part as follows:

"The township board of directors shall form the township into one or more road districts.
* * * * *

We have carefully examined all of the statutes relating to the formation of special road districts in counties under township organization and find nothing contained therein precluding the formation of such special road districts to include areas now forming all or parts of general road districts created under the provisions of Section 231.160, RSMo 1949, quoted supra. We, therefore, are persuaded to the belief that such special road districts may lawfully be formed upon compliance with statutory requirements. Judicial sanction of such action appears by inference in the following statement appearing in State ex rel. Moore v. Wabash R. Co., reported 208 S.W.2d 223, from which we quote, l.c. 226:

"Upon a complete examination of the constitutional sections and of the statutes

Honorable Jimmie B. Trammell

enacted pursuant thereto beginning in 1909, it appears there is nothing in any language used, any procedure prescribed or any purpose indicated which points to any different intended use of the words 'road district,' than that in which they are commonly understood and accepted. Certainly the words are not synonymous with township. There may be a number of general road districts within a township. A special road district would conceivably embrace much more than an entire township. * * * * * (Emphasis ours)

It is our thought that your second question is answered by a previous official opinion of this department delivered under date of July 17, 1951, to the Honorable Don Kennedy, Prosecuting Attorney, Vernon County. A copy of such opinion is enclosed herewith.

CONCLUSION

In the premises we are of the opinion:

1. That special road districts may be created in counties operating under the township form of government upon compliance with the provisions of Section 233.320-233.445, RSMo 1949, and that such newly formed special road districts may consist of all or portions of one or more general road districts previously organized;
2. That the county court can in its discretion deny a petition for incorporation of a special road district even though such petition is in proper form and contains the requisite number of signatures if remonstrances are filed; and
3. That remonstrances must be signed by resident landowners living within the proposed new special road districts.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Will F. Berry, Jr.

WFB:DA

Very truly yours,

Enclosure

JOHN M. DALTON
Attorney General