

SPECIAL ROAD DISTRICTS: A special road district, which  
CITY OR TOWN ROAD maintains its own rock quarry,  
DISTRICTS: may sell the surplus product  
QUARRIES: thereof to other governmental  
bodies.

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June 23, 1959



Honorable Ike Skelton, Jr.  
Prosecuting Attorney  
Lafayette County  
Lexington, Missouri

Dear Mr. Skelton:

This is in reply to your recent request that we submit an opinion as to whether a special road district may quarry crushed rock for its own use and sell some of the production of that quarry to other governmental bodies.

Your inquiry reads as follows:

"I have been asked by our County Court to request of you an opinion covering the following question: Can a special road district quarry and crush rock and sell it to another road district, a county, municipality, or another political subdivision of the County or State?

"If you could give us an official opinion upon this matter, we would more than appreciate it."

A special city or town road district may maintain a quarry to process rock for its use on roads within the district. This office has previously made a determination that it may do so and, after having reviewed this opinion at some length, we are of the view that it correctly expresses the present law. Accordingly, we are enclosing for your information our opinion of June 15, 1943, to the Honorable Phil H. Cook, which determined that a special road district might maintain a quarry. There remains to be decided, however, the question of whether a special road district may make sales of crushed

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stone from its quarry to other governmental bodies.

The question of maintaining a quarry and selling the product thereof to other governmental bodies has been recently passed upon in the case of counties by our Supreme Court, in *Everett v. County of Clinton*, 282 S. W. 2d 30. It is held in that case that counties could dispose of surplus products of a county-owned quarry to other governmental bodies, however, sale to other than governmental bodies was enjoined on the grounds of the county engaging in a commercial enterprise. The Court, per Dalton, J., at l.c. 39, stated the rule as follows:

"\* \* \* The sale of crushed rock to the special road districts of the county for use upon the public roads of the county lying within the boundaries of the respective districts was for a public purpose, to wit, the improvement of the public roads of the county. There is no suggestion in this record that any private purpose was being served in the sale of crushed stone to the several special road districts. Clearly, the special road districts had authority to buy crushed stone.

\* \* \* \* \*

"Sales of crushed rock by the county to private individuals for private purposes as shown by this record were properly enjoined."

Our laws pertaining to city and town road districts, found in Chapter 233, would also seem to contemplate sale of the surplus product of a special road district's quarry to other governmental bodies. First, the duties and powers granted to the board by Section 233.070, RSMo Cum. Supp. 1957, indicate that the board is to have exclusive control of materials to effectuate its work and impose duties of road maintenance in the following language:

"(1) Have sole, exclusive and entire

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control and jurisdiction over all public highways within its district outside the corporate limits of any city or village therein to construct, improve and repair such highways, and shall remove all obstructions from such highways, and for the discharge of these duties shall have all the power, rights and authority conferred by general statutes upon road overseers;

"(2) At all times keep the public roads under its charge in as good repair as the means at its command will permit, and for this purpose may employ hands at fixed compensation, rent, lease or buy teams, implements, tools and machinery, all kinds of motor power, and all things needful to carry on such road work, or the board may have such road work or any part of such work done by contract, under such regulations as the board may prescribe; and

"(3) Have authority to enter into contracts with any city, town or village within its district relating to the improvement of the streets, roads or highways, or any bridge thereon, located in the city, town or village."

Secondly, by Section 233.075, RSMo 1949, special road districts are given extensive powers over their purchase of materials for road purposes. Again, we quote the applicable section in full as follows:

"Such board may buy all material which may be used, directly or indirectly, in constructing, improving or repairing any public highway or bridge in its district, and is authorized to do and perform all acts within its district for which any authority is given to road overseers under the general road law of this state."

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Thirdly, the board has power to sell its property by Section 233.090, RSMo 1949, as follows:

"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."

So we have seen by these provisions that the board has a duty to maintain a district's roads and, to effectuate the purposes, has been given powers to contract with other governmental bodies, the power to purchase needful materials and the power to sell property of the district not needed. That governmental bodies have the right to dispose of surplus product from one of their governmental enterprises has long been recognized. The rule is stated in 63 C.J.S., Municipal Corporations, Section 967, page 516, which we quote in part, as follows:

"A municipal corporation holding or acquiring property for a special purpose ordinarily lacks power to sell or otherwise dispose of such property while needed for such special purpose, except as may be prescribed by law; but ordinarily it is accorded power to sell surplus property not required for the special purpose or property which it has become impossible to use for such special purposes. \* \* \* "

#### CONCLUSION

Therefore, it is the conclusion of this office that a special road district may maintain a quarry for the purpose of acquiring materials needed for the maintenance of its roads, and may sell the surplus products to other

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governmental bodies. It may not sell surplus stone to purchasers other than governmental bodies.

The foregoing opinion, which I hereby approve, was prepared by my assistant J. B. Buxton.

Very truly yours,

John M. Dalton  
Attorney General

JBB:lc

1 enclosure