

ROAD DISTRICTS:
CONSERVATION COMMISSION:
DISSOLUTION OF ROAD DISTRICTS:
CREATION OF ROAD DISTRICTS:

Land owned by the State Conservation Commission does not count in the total acreage of an area for the purposes of determining whether landowners petitioning for the creation or dissolution of a special road district own at least 50% of the acreage as required by law.

July 21, 1961



Honorable Morran D. Harris
Prosecuting Attorney
St. Clair County
Osceola, Missouri

Dear Mr. Harris:

This is in reply to your opinion request of May 26, 1961, wherein you state:

"Petition has been filed with the County Court of St. Clair County asking for the dissolution of Taber Township Special Road District, under the provisions of Section 233.295 RSMo. 1959, and the County Court has set the matter down for hearing for June 7, 1961. There are about 2500 acres in this special road district, of which some 1000 acres are owned by the Conservation Commission of the State of Missouri. The parties who have signed the petition for dissolution own slightly less than one-half of the total acreage in the district, but they own more than one-half of the acreage exclusive of the acreage owned by the Conservation Commission.

"The County Court has asked me to request your opinion on two questions: 1. Does the acreage owned by the Conservation Commission, or any other Government Agency, count in the total acreage in the district for the purpose of determining whether or not those parties petitioning for dissolution own at least 50 per cent of the acreage as required by law? and: 2. If it does count in the total, may the

Honorable Morran D. Harris

Conservation Commission or any other Government Agency owning land therein, sign the petition for dissolution or the remonstrance?

"We would appreciate your opinion by June 7 if possible. If not, I will ask the Court to take the matter under advisement at the time of the hearing until we get the opinion."

Section 233.295, RSMo 1959, states as follows:

"Whenever a petition, signed by the owners of a majority of the acres of land, within a road district organized under the provisions of sections 233.170 to 233.315 shall be filed with the county court of any county in which said district is situated, setting forth the name of the district and the number of acres owned by each signer of such petition and the whole number of acres in said district, the said county court shall have power, if in its opinion the public good will be thereby advanced to disincorporate such road district. No such road district shall be disincorporated until notice be published in some newspaper published in the county where the same is situated for four weeks successively prior to the hearing of said petition."

Pursuant to said sections, in order for the county court to create a road district, it must rule on a petition signed by the owners of a majority of the acres of land within the proposed district to be organized.

We are directly confronted with the question, "Is land owned by the State Conservation Commission and situated within a special road district formed under the provisions of Sections 233.170 to 233.315, RSMo 1959, subject to taxation or special assessment?"

Honorable Morran D. Harris

Section 41, Article IV, Constitution of Missouri, 1945, provides: "The commission may acquire by purchase, gift, eminent domain, or otherwise, all property necessary, useful or convenient for its purposes, and shall exercise the right of eminent domain as provided by law for the highway commission."

Thus, pursuant to this section of the Constitution, the Conservation Commission may acquire property, and hold same in its governmental capacity.

Section 6, Article X, Constitution of Missouri, 1945, specifically exempts from taxation all property, real and personal, of the State of Missouri, and further provides that all laws exempting from taxation property other than the property enumerated in said Article X shall be void. Said section states:

"All property, real and personal, of the state, counties and other political subdivisions, and non-profit cemeteries, shall be exempt from taxation; and all property, real and personal, not held for private or corporate profit and used exclusively for religious worship, for schools and colleges, for purposes purely charitable, or for agricultural and horticultural societies may be exempted from taxation by general law. All laws exempting from taxation property other than the property enumerated in this article, shall be void."

In addition thereto, Section 137.100, RSMo 1959, provides:

"The following subjects are exempt from taxation for state, county or local purposes:

"(1) Lands and other property belonging to this state;"

In *Normandy Consolidated School District v. Wellston Sewer District*, 77 S. W. 2d 477, l.c.478, the St. Louis Court of Appeals stated:

Honorable Morran D. Harris

"But even though the legislative body has the unquestioned power to require public property located in a benefit district to pay its proportionate share of the cost of the benefit, yet the rule is that public property, which is made use of as an integral part of government in the exercise of a governmental function, is nevertheless to be held exempt from any such special assessment unless in the enactment of the law the lawmakers have manifested a clear legislative intent that such public property shall be subject to the assessment."

A review of Sections 233.170 to 233.315, RSMo 1959, as well as other sections of the Missouri Statutes, discloses no statutory authority for the levying of special assessments against state property situated within a special road district created pursuant to Sections 233.170 to 233.315, RSMo 1959.

Based upon the foregoing, it may be stated that land owned by the State Conservation Commission and situated within a special road district is not subject to taxes or special assessments.

To include the land owned by the Conservation Commission in the total acreage of an area for the purpose of determining whether landowners in the area petitioning either for establishment or dissolution of a road district comprise a majority of the acreage owners within the district would create an inequitable and intolerable situation. For, in a situation, such as presented in this case, wherein the special road district consists of a total of 2500 acres of which some 1000 acres are owned by the Conservation Commission, it might well be near to impossible to dissolve as well as create such a special road district without the consent and cooperation of the Conservation Commission. In situations where over half of the land acreage in an area is owned by the Conservation Commission, it would be possible for the Commission to completely defeat any attempt to create a road district in said area, notwithstanding the wishes of all of the other landowners to the contrary in said area.

Thus you would have a situation whereby those landowners

Honorable Morran D. Harris

subject to taxation would have a privilege estopped by landowners not subject to taxation.

On the other hand, it would be possible, in the event the Commission owned over 50% of the land acreage in an area, to have a road district created by a petition signed by a duly authorized representative of the Commission alone. The creation of such a road district might well be contrary to the wishes of the other landowners in the created district. If the Commission purchased over half of the total acreage in an established road district, it could prevent dissolution by refusing to sign a petition for dissolution in the event the other landowners wished to do so.

Thus you would have a state agency not subject to property tax controlling the disposition of the property tax of landowners subject to tax, without an opportunity for these taxable landowners to determine the disposition of their property taxes.

In addition to the foregoing, Section 653 of 59 C.J., page 1103, states the following rule of statutory construction:

"The state and its agencies are not to be considered as within the purview of a statute, however general and comprehensive the language of such act may be, unless an intention to include them is clearly manifest, as where they are expressly named therein, as included by necessary implication. . . ."

Since Sections 233.170 to 233.315 disclose no language either directly or by implication referring to real property owned by the state or its agencies, the rule quoted above applies.

CONCLUSION

It is, therefore, on the basis of the foregoing, the conclusion of this office that the land owned by the State Conservation Commission does not count in the total acreage of an area for the purposes of determining whether landowners petitioning for the creation or dissolution of a special road district own a majority of the acreage as

Honorable Morran D. Harris

required by law.

The foregoing opinion, which I hereby approve, was prepared by my assistant, George W. Draper, II.

Very truly yours,

THOMAS F. EAGLETON
Attorney General

GWD lc