

ROAD DISTRICTS: Attorney employed by private citizens for
SPECIAL ROAD DISTRICTS: purpose of advocating disincorporation of
ROADS AND BRIDGES: a road district may not be paid from funds
ATTORNEYS: of district.

November 17, 1961

Honorable Paul McGhee
Prosecuting Attorney
Stoddard County
Bloomfield, Missouri



Dear Sir:

We have your letter of recent date, which letter reads:

"Stoddard County is of the third class and has township organization. In 1948 the 'Bernie Special Road District of Stoddard County, Missouri' was organized pursuant to Section 233.320 et. seq. RSMo.

"In 1961, pursuant to Section 233.425 et. seq. a number of land owners residing within the district filed in the County Court a petition for dissolution of the district. On April 10, 1961, after notice and several hearings, the County Court entered its order dissolving the district, and appointed a trustee to take charge of the affairs of the district.

"The petitioners had caused an attorney to prepare the petition and appear before the County Court to advocate the dissolution of the district. The attorney submitted to the trustee a claim for \$250.00 as his fee for services rendered by him in bringing about the dissolution of the district. The trustee found the amount of the fee to be reasonable, but refused payment upon the ground that it was not a valid claim against the assets of the district. The attorney has now demanded payment from the County Court.

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"Neither the County Court nor the officials of the district employed the attorney.

"I request your opinion as to whether the attorney is entitled to receive payment for his services from the assets of the district or any other public money."

The statute under which the petition was filed and the road district dissolved is Section 233.425, RSMo 1959, which reads as follows:

"Whenever a petition, signed by the owners of a majority of the acres of land owned by residents of the county residing within the district organized under the provisions of sections 233.320 and 233.445, 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 is published in some newspaper published in the county where the same is situated for four weeks successively prior to the hearing of said petition."

Subsequent to the dissolution of the district, the county court obviously appointed a trustee as required by Section 233.435, RSMo 1959. The duties of such a trustee are set out in Sections 233.440 and 233.445, RSMo 1959, which provide:

Section 233.440:

"The trustee shall have power to prosecute and defend to final judgment all suits instituted by or against the road district, collect all money due the same, liquidate all lawful demands against the same, and for that purpose shall sell any property belonging to such road district or so much

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thereof as may be necessary, and generally to do all acts requisite to bring to a speedy close all the affairs of the road district, and for that purpose, under the order and direction of the county court, to exercise all the powers given by law to said road district."

Section 233.445:

"When the trustee shall have closed the affairs of the road district, and shall have paid all debts due by said road district, he shall pay over to the county treasurer all money remaining in his hands, and take receipt therefor, and deliver to the clerk of such county court all books, papers, records and deeds belonging to the dissolved road district."

The attorney asserting the claim against the road district's funds compiled a list of authorities in support of the claim, which list was received with your letter. Without analyzing each herein, suffice it to say we do not believe that those authorities are determinative of this question. The cases and texts cited in support of the claim relate to private funds held in actual or constructive trust for the persons who received the claimed benefits of the attorney's unsolicited services.

Although there is no Missouri case law on this problem, we believe sound public policy should prohibit the dissipation of road district funds to support the litigation of private parties, regardless of the outcome. We do not believe that the resolution of the instant problem can turn on the finding of the county court that the dissolution of the district will advance the public good. Although Section 233.295, RSMo 1959, requires such a finding by the county court as a prerequisite to an order of disincorporation, there is always a presumption that whenever a county court acts it is for the "public good."

We might also observe that the "public good" in a particular situation may bear no relationship to what is in the best interest of an individual landowner in the district. Disincorporation of a road district may in fact work to the

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detriment of such a person; and it cannot be reasonably contended that he should be required under such circumstances, to pay for the advancing of the public good as distinguished from his personal good.

Even if the theory that those who receive a common benefit from the labors of an attorney should share the burden of his fee could be invoked here (as the claimant-attorney apparently is urging), it is submitted that payment out of road district funds of the attorney's fees would not be authorized. The rule running through the cases cited by the claimant is expressed clearly in *St. Louis Union Trust Co. v. Fitch* (Mo. Sup. 1945), 190 SW2d 215, 217, where the court said:

"On the merits respondent contends 'that a fund which has been increased or protected by the services of an attorney should bear the expenses of allowance of his fees'.

"This is admitted to be the rule announced in the cited cases. Assuming, but not ruling that respondent was an attorney for the trust estate in the mandamus cases, it appears that his services in said cases neither increased nor protected the fund. It follows that said cases are not in point."

Applying that rule to the instant problem, it is obvious that the funds of the road district were neither increased nor protected by the dissolution of the district. Under the provisions of Section 233.300, RSMo 1959, dissolution has no effect upon "any right accruing to such road district or to any person," nor does dissolution "invalidate or affect any contract entered into or imposed on . . ." the district.

There is no statutory authorization for the payment of attorney fees by a county court or by its appointed trustee upon dissolution of a road district. Absent such authorization, to permit such payment would require us to accord to county courts judicial powers such as are exercised by a court of equity in awarding an attorney fee out of a fund. That county courts enjoy only those powers given them by statute and do not share in the judicial power of the state is clearly set out in the cases on this subject.

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In the case In Re City of Kinloch (Mo. Sup. 1951) 242 SW2d 1959, our Supreme Court stated that the judicial pronouncements concerning county courts subsequent to the Constitution of 1945 make clear the fact that, l.c. 64, "county courts now can have no authority to determine matters comprehending judicial action in the exercise of 'the judicial power of the state'." At page 63, the Court said:

"* * * The constitutional meaning of 'judicial power of the state' does not contemplate every exercise of duties judicial in nature, but refers to such powers and authority as courts and judges exercise; such as legitimately pertain to an officer in the department designated by the Constitution as 'judicial'; such as are exercised in the ordinary forms of a court of justice, in a suit between parties, with process. State ex rel. School District No. 1 v. Andrae, 216 Mo. 617, 116 S.W. 561. Many administrative and quasi judicial bodies, as a part of their delegated duties, must hear and determine facts in order to ascertain what action the law imposes upon them. In this respect such bodies are performing duties judicial in nature. But an administrative body or even a quasi judicial body is not and cannot be a court in a constitutional sense. * * *"

Thus, since no positive authority exists which would permit the payment and since no authority may be inferred from the nature of the county court or its appointed trustee, it follows that the requested attorney fee may not be paid by the county or the trustee.

CONCLUSION

It is therefore the opinion of this office that an attorney who is employed by private citizens for the purpose of petitioning the county court for the dissolution of a road district may not, upon dissolution of the district, properly receive his fees from the funds of the district.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Albert J. Stephan, Jr.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

AJS:aa