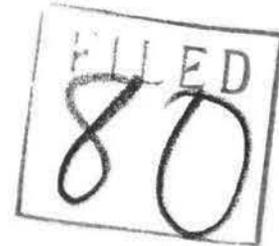


SPECIAL ROAD DISTRICTS:
OFFICERS:
TERM OF OFFICE:
REMOVAL OF SECRETARY OF
SPECIAL ROAD DISTRICT:

President, vice-president and secretary of special road districts organized under Section 233.170 RSMo 1959 et seq. serve at the pleasure of the board and may be removed from office only upon a majority vote of the board. A secretary, not a member of the board, elected by unanimous vote, holds office until removed by vote of a majority of the board.

July 12, 1961



Honorable Rufe Scott
Prosecuting Attorney
Stone County
Galena, Missouri

Dear Mr. Scott:

This office is in receipt of your request for an opinion as follows:

"Section 233.185, Revised Statutes, provides that the commissioners appointed by the County Court and benefit assessment road districts not under township organization may organize and elect one of their number president, vice president and another a secretary and provides that by unanimous vote they may appoint a secretary not a member of the board.

"Section 233.180 fixes the term of each can hold office as three years, one to be elected each year.

"The commissioners of the district in question by consent and by unanimous vote elected a secretary, not a member of the board in September, 1960. No one has been elected secretary since the election held the first Tuesday after the first Monday in January, 1961. The new elected commissioner objects to the secretary holding over.

"Please advise me as to the term of office of president, vice president and secretary or if they have to be elected each year and whether the secretary should be elected each year."

Honorable Rufe Scott

Section 233.185, RSMo 1959, provides in part that the commissioners of a special road district organized under Sections 233.170, RSMo 1959, et seq. "shall meet * * *and shall organize by electing one of their number president, another vice-president and another secretary; provided, that by a unanimous vote of said commissioners any person not a member of said board may be chosen secretary."

The statute is silent with respect to the term of office of officers elected by the board. In such situation, the applicable rule is that the officers are elected for an indefinite period and are removable at the will of the appointive power. In State ex inf Barrett ex rel Bradshaw v. Hedrick, 294 Mo. 21, 241 S.W. 402, l.c. 416, the court stated the foregoing rule as follows:

"If the simple power to appoint is conferred and no term is fixed by law and nothing else appears, then the appointee may be removed at pleasure, by the appointing authority, without notice, the preferment of charges or the assignment of reasons. * * *"

To the same effect is Cook v. St. Francois County, 162 S.W.2d 252.

Section 1.050 RSMo 1959 provides as follows:

"Words importing joint authority to three or more persons shall be construed as authority to a majority of the persons, unless otherwise declared in the law giving the authority."

Therefore, the officers elected by the board hold their respective offices at the pleasure of the board and may be removed from the office at any time by a vote of the majority of the board at a meeting of the board duly held.

Your request for an opinion raises the further question as to whether a secretary, not a member of the board and who was elected by unanimous vote of the board as then constituted, may be removed from office by a vote of less than a majority of the board members. Stated otherwise, the question is whether a newly elected commissioner may, by withdrawing his consent to a person not a member of the board continuing to serve as secretary, thereby terminate the tenure of the secretary.

Section 233.185, RSMo 1959, authorizes the board by unanimous vote of the commissioners to choose as secretary a person not a member of the board. Once such a person has been elected as secretary

Honorable Rufe Scott

by unanimous vote, the selection is complete and the secretary so chosen is in exactly the same position as though he had been initially a member of the board. There is no language in the statute which evidences a legislative intent that the secretary, not a member of the board, shall hold office only so long as all commissioners shall continue to so will it. Once the board, by unanimous action, has waived the requirement that a secretary be a member of the board, such waiver is effective so long as such secretary holds office without regard to any change of members of the board. There is no provision in the law which authorizes or prescribes a procedure for an individual commissioner to withdraw his consent from the waiver theretofore granted by the board as a whole. Hence, the secretary may be removed only by a vote of a majority of the board at a meeting of the board duly held.

CONCLUSION

It is the opinion of this office that the president, vice-president and secretary of special road districts, organized under Sections 233.170, RSMo 1959 et seq. are not elected for a definite term but serve at the pleasure of the board and may be removed from office only upon a vote of the majority of the members of the board voting at a meeting duly held. The secretary of such a board, not a member thereof and who was elected by unanimous vote of the commissioners may also be removed only upon vote of majority of the board voting at a meeting duly held.

The foregoing opinion, which I hereby approve, was prepared by my assistant Joseph Nessenfeld.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

JN:ms