

SPECIAL ROAD DISTRICTS:

May issue warrants in anticipation of current year's income. May function with two commissioners pending appointment of third.

August 11, 1961

Honorable Stephen H. Zeilmann
Representative
Osage County
Linn, Missouri



Dear Mr. Zeilmann:

This is in response to your request for an opinion dated July 26, 1961 which reads as follows:

"Pursuant to our telephone conversation this morning, I am submitting herewith some pertinent information on which I humbly request an opinion. I have been asked by several of my constituents to secure an opinion from your office.

"The State Highway Department is contemplating building a road into Linn, the county seat of Osage County. This road is officially designated as Route 'V'. As you know, the right of way for all supplementary roads such as Route 'V' must be secured and deeds for same made to the State Highway Department with no cost to the Department. This often times makes it necessary to condemn some land or property, and have an appraisal made of same. In the city of Linn, two separate parcels of property have been condemned and appraised. The appraisal value was set at \$2300.00 for these two parcels of property. The 'City of Linn Special Road District' requests an opinion whether or not the board may issue warrants in this amount. The amount of tax revenue received by the special road district in 1960 was \$3000.01 and no change has been made in the levy for 1961, so they will receive at least this amount in 1961. Section 233.135 R.S. Mo. 1959 seems to indicate clearly that this is permissible. Nearly all funds in the special road districts have been spent at this time for street improvements with insufficient funds left to pay for the appraisals, unless warrants can be issued against this year's anticipated revenue.

Honorable Stephen H. Zeilmann

"One member of the three man board of the special road district resigned recently, leaving only two members at present, as no appointment has been made to fill the vacancy. Does the present two members have the authority to do business before the vacancy is filled?"

"Would appreciate an opinion on the above matters at your earliest convenience."

Section 233.135 RSMo 1959 provides:

"Such board may issue warrants on the treasurer of the board in payment of the expenses and obligations which the board are authorized to incur in behalf of such special road districts and such warrants may be issued in anticipation of the income and revenue provided for the year for which the debt or obligation for which the warrant is issued was incurred; but such districts or such board on behalf thereof shall not become indebted in any manner or for any purpose to an amount exceeding in any one year the income and revenue provided for such year; provided, however, that this shall not prevent the incurring of indebtedness under bond issue as is or may be provided by law."

We have no difficulty in agreeing with the statement in your letter that the above quoted section "seems to indicate clearly" that warrants may be issued in anticipation of the district's annual income. It is the opinion of this office that under the facts set out in your letter, with the exception noted below, it would be entirely proper for the "City of Linn Special Road District" to issue warrants not in excess of the anticipated income of the current year for debts of the district incurred this year.

The second question stated in your request is whether, following the resignation of a member of the Board of Commissioners and pending the appointment of his successor, the Board may continue to conduct the business of the district. Although

Honorable Stephen H. Zeilmann

there is no specific statutory statement in the Chapter 233 as to what constitutes a quorum of such a body, we believe that the two remaining members may continue to act as the board legally constituted during the interim. Section 1.050, RSMo 1959 provides:

"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."

CONCLUSION

It is the opinion of this office that the City of Linn Special Road District may issue warrants in anticipation of its income for the current year and may continue to carry on its business through its two remaining commissioners pending the appointment of the third.

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

Very truly yours,

THOMAS F. EAGLETON
Attorney General

AJS:mw