

COUNTY COURTS:
SPECIAL ROAD DISTRICTS:
MUNICIPALITIES:
POLITICAL SUBDIVISIONS:
CONTRACTS BETWEEN POLITICAL
SUBDIVISIONS:
COOPERATION BETWEEN POLITICAL
SUBDIVISIONS:

Article VI, Section 16, Constitution of Missouri, and Section 70.220, RSMo 1959, authorizes county court and special road district to contract for maintenance of public road in special road district; but does not authorize such a contract between the county court and a private person for maintenance of a private road.

OPINION NO. 4 (1966)
OPINION NO. 51 (1965)

December 9, 1966

Honorable Wendell L. Evans, Jr.
Prosecuting Attorney
Laclede County
Lebanon, Missouri



Dear Mr. Evans:

You have inquired of this office whether or not the opinion issued June 3, 1943, by the Attorney General to Honorable Oliver Rasch, is still valid. Such opinion held that the county court had no authority to rent road machinery to a township or other political or municipal subdivision or corporation, nor to individuals.

Because of constitutional and statutory changes since the 1943 opinion was issued, this office has withdrawn the 1943 opinion. The 1945 Constitution contained a provision directly applicable to the subject matter of the 1943 opinion. Article VI, Section 16, of the Missouri Constitution reads as follows:

"Co-operation by local governments with other governmental units.--Any municipality or political subdivision of this state may contract and cooperate with other municipalities or political subdivisions thereof, or with other states or their municipalities or political subdivisions, or with the United States, for the planning, development, construction, acquisition or operation of any public improvement or facility, or for a common service, in the manner provided by law."

Pursuant to this Constitutional provision the legislature passed Section 70.220, RSMo, which provides as follows:

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"Any municipality or political subdivision of this state, as herein defined, may contract and cooperate with any other municipality or political subdivision, or with an elective or appointive official thereof, or with a duly authorized agency of the United States, or of this state, or with other states or their municipalities or political subdivisions, or with any private person, firm, association or corporation, for the planning, development, construction, acquisition or operation of any public improvement or facility, or for a common service; provided, that the subject and purposes of any such contract or cooperative action made and entered into by such municipality or political subdivision shall be within the scope of the powers of such municipality or political subdivision. If such contract or cooperative action shall be entered into between a municipality or political subdivision and an elective or appointive official of another municipality or political subdivision, said contract or cooperative action must be approved by the governing body of the unit of government in which such elective or appointive official resides."

In your letter you stated there are two issues: (1) Does the County Court have power to lease a motor grader to a special road district or common district to be used on private roads of farmers and other residents of the road district? (2) Does the County Court have the power to directly use county road machinery and county employees to work on the private roads of residents of the road district for which the county will be compensated?

A limitation upon the power to contract is imposed by Section 70.220, supra, in that the object to be accomplished must be "a public improvement, facility or common service." The question is whether the term "common service" as contained in Section 70.220, RSMo 1959, actually means common public service. It is our view that the word "public" is necessarily implied.

Section 70.220, RSMo 1959, does mention contracting or cooperating with "any private person, firm association or corporation," but it seems clear that the statute does not envision the performance of some service on behalf of such private persons, but merely that they may be employed to assist in providing a public service.

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It is our view that the county court, acting for a county can contract with a special road district for maintenance of the public roads in such road district, but not for the maintenance of private roads of such district.

Therefore, the two issues presented in your opinion request must be answered in the negative since both questions involve the use of publicly owned equipment to render a nonpublic service, i.e., the care of a private road.

CONCLUSION

Article VI, Section 16, Constitution of Missouri, and Section 70.220, RSMo 1959, authorizes a county court and a special road district to contract with each other for maintenance of public roads located in the special road district by the county but do not authorize such a contract between private persons and a county court for maintenance of a private road.

Very truly yours,


NORMAN H. ANDERSON
Attorney General