

February 25, 1966

OPINION NO. 181
Answered by Letter
Randolph

Honorable James L. Paul
Prosecuting Attorney
McDonald County
Pineville, Missouri 64856



Dear Mr. Paul:

This letter is in answer to your request for an opinion of this office which you have stated as follows:

"Under the provisions of Section 137.565 RSMo., does each common road district within a county have to present a petition to the County Court with ten or more qualified voters and taxpayers for each common road district; or may the general common road district submit a general petition so long as ten or more voters and taxpayers of the total number of common road districts qualify?"

Section 137.565, RSMo., reads:

"Whenever ten or more qualified voters and taxpayers residing in any general or special road district in any county in this state shall petition the county court of the county in which such district is located, asking that such court call an election in such district for the purpose of voting for or against the levy of the tax provided for in the second sentence of the first paragraph of section 12 of article X of the Constitution of Missouri, it shall be the duty of the county court, upon the filing of such petition, to call such election forthwith to be held within twenty days from the date of filing such petition. The petition so filed shall set out the duration of the tax to be levied in a period

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of one, two, three or four years and the ballot to be used for voting shall specify the number of years duration of the tax levy, but in no event shall the duration of the tax levy be for a period of more than fourtyears. Such call shall be made by an order entered of record setting forth the date and place of holding such election, the manner of voting and the rate of tax the court will levy, which rate shall not exceed thirty-five cents on the hundred dollars assessed valuation on all taxable real and tangible personal property in the district. A copy of such order shall be published in two successive issues of any newspaper published in such district, if any, and if no newspaper is published in such district, three certified copies of such order shall be posted in public places in such district. The first publication in said newspaper and the posting of such notice shall be not less than ten days before the date of such election. Such court shall also select one or more judges and clerks for such election to receive the ballots and record the names of the voters."

The Supreme Court of Missouri, in construing similar provisions of former statutes, from which our present statute is taken, said, State ex rel and to use of Moore v. Wabash R. Co., 208 S.W.2d 223,226:

"[2] 'Road district' has a distinct connotation and understanding in the law. It is but an agency or subdivision of the state created by law to aid in the administration of that general function which concerns highways. 29 C.J.S., Highways, §145.

"Upon a complete examination of the constitutional sections and of the statutes enacted pursuant thereto beginning in 1909, it appears there is nothing in any language used, any procedure prescribed or any purpose indicated which points to any different intended use of the words 'road district', than that in which they are commonly understood and accepted. Certainly the words are not synonymous with township. There may be a number of general road districts within a township. A special road district

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would conceivably embrace much more than an entire township. We can reach no other conclusion than that Section 23 was adopted, and carried forward into the second sentence of Section 12 for the specific purpose of permitting the people in such a 'road district' to vote the second additional tax upon themselves for road purposes should that be their desire."

It is clear that the statute contemplates separate action of individual road districts which are to decide separately whether they desire an election on the levy provided in the second sentence of the first paragraph of Section 12 of Article X, of the Constitution of Missouri.

Answering your question directly, therefore, we think that pursuant to Section 137.565 RSMo., each common road district that desires such an election must present a petition to the county court signed by 10 or more qualified voters and taxpayers within such district; and that a general petition on behalf of more than one common road district for such purpose would not qualify under the statute.

Yours very truly,

NORMAN H. ANDERSON
Attorney General