

ROAD DISTRICTS:
COUNTIES:
COUNTY COURTS:
ROADS:

It is illegal for a special road district to repair or improve any private roads even though the cost is paid for by the owner.

OPINION NO. 78
495 (1966)

March 16, 1967

Honorable Byron L. Kinder
Prosecuting Attorney of
Cole County
Jefferson City, Missouri



Dear Mr. Kinder:

This opinion is prepared to respond to your recent request whether it is illegal for a special road district formed under Chapter 233 RSMo., 1959, to repair or improve roads located on private property when the cost is paid for by the owner, when the owner is also a commissioner of the road district.

The County Clerk of Cole County has advised this office that the special road district involved is an "eight-mile road district". The provisions of Sections 233.070 and 233.085 RSMo., 1959, establish the authority of the board of the district over the equipment belonging to the district.

There are two opinions that have been issued by this office that should be considered with your question. Opinion No. 4, dated December 9, 1966, addressed to the Honorable W. L. Evans, Jr., holds that a county court is not authorized to contract with a private person for the maintenance of a private road (opinion attached).

Opinion No. 63, dated February 16, 1954, addressed to the Honorable Garner L. Moody, holds that a township has no authority to use township machinery to do work for private individuals for hire (opinion attached). These opinions are attached for your information inasmuch as they explain the principles that are involved in answering your question.

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The Missouri Supreme Court in Miller v. Ste. Genevieve County, 358 S.W.2d 28, l.c. 30, had this to say on a similar case involving the authority of the county to expend money obtained by taxes on the improvements of a private road:

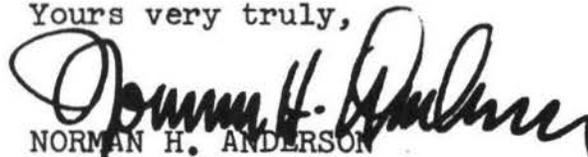
"Although the allegations in Count II are brief, they clearly set forth the contention that Ste. Genevieve County and the members of the county court have spent and are proposing to spend public money obtained by taxes in the improvement of a privately owned road. If this is true the expenditures are illegal."

CONCLUSION

We conclude, therefore, that it is illegal for a special road district organized under Chapter 233 to repair or improve any private roads even though the cost of such repair may be paid for by the owner.

The foregoing opinion which I hereby approve was prepared by my assistant, Richard C. Ashby.

Yours very truly,


NORMAN H. ANDERSON
Attorney General