

SPECIAL BENEFIT:
ASSESSMENT ROAD DISTRICTS:
BOUNDARIES CANNOT BE EXTENDED
OR LESSENEED:

County court of non-township organization county cannot, under provisions of Section 231.010 RSMo. 1959, change boundaries of the special benefit assessment road districts of county, organized under Sections 233.170 to 233.315, RSMo. 1959, taking territory from first district and adding same to common road district of county, and taking territory from such common road district and adding it to said second district.

OPINION NO. 134

April 18, 1968



Honorable Anthony McConnell
Prosecuting Attorney of
Christian County
Ozark, Missouri 65721

Dear Mr. McConnell:

This office is in receipt of your request for a legal opinion upon the facts stated in your letter which are said to involve a problem arising out of a conflict of Missouri statutes pertaining to the county court's powers to add or take away territory of special road districts, under Sections 233.170 to 233.315 RSMo. 1959. It appears the alleged conflict is between Sections 231.010 and 233.170 RSMo. 1959.

From the factual situation given in the opinion request, special road districts of your county, referred to as "X" and "Y", were organized and exist under and by virtue of Sections 233.170 to 233.315 RSMo. 1959, governing the organization, management and dissolution of special benefit assessment road districts of non-township organization counties.

Residents of special road district "X" desire the county court to change the boundaries of said district in such a manner that a part of its territory (amount not stated) will be taken away and returned to the common road district of the county.

At the same time, residents of special road district "Y" desire the county court to change the boundaries of the district

Honorable Anthony McConnell

in such a manner as to add territory of more than a mile square to the district.

We understand the specific inquiry of the opinion to be:

Can the county court of a non-township organization county, under provisions of Section 231.010 RSMo. 1959, change the boundaries of two special benefit assessment road districts of the county, organized under provisions of Sections 233.170 to 233.315, RSMo. 1959, in such a manner as to take territory from the first special road district and add it to the common road district of the county and also to take territory from such common road district and add it to the second special road district?

Section 231.010 RSMo. 1959 reads as follows:

"The county courts of all counties, other than those under township organization, shall during the month of January, 1918, with the advice and assistance of the county highway engineer, divide their counties into road districts, all to be numbered of suitable and convenient size, road mileage and taxable property considered. Said courts shall, during the month of January biennially thereafter, have authority to change the boundaries of any such road district as the best interest of the public may require."

Section 233.170 RSMo. 1959 provides that county courts may form special road districts and reads as follows:

"1. County courts of counties not under township organization may divide the territory of their respective counties into road districts, and every such district organized according to the provisions of Sections 233.170 to 233.315 shall be a body corporate and possess the usual powers of a public corporation for public purposes, and shall be known and styled '_____ road district of _____ county', and in that name shall be capable of suing and being sued, of holding such real estate and personal property as may at any time be either donated to or purchased by it in accordance with the provisions of Sections 233.170 to 233.315, or of which it may be rightfully possessed at the time of the passage of Sections 233.170 to 233.315 and of contracting and being contracted with as herein provided.

2. Districts as organized may be of any dimensions that may be deemed necessary or advisable, except that every district shall be included wholly within the county organizing it and shall contain at least

Honorable Anthony McConnell

six hundred and forty acres of contiguous territory; provided, that the county courts shall not have power to divide the territory within the corporate limits of a city having a population of one hundred fifty thousand into such road district."

A special benefit assessment road district referred to in Section 233.170, supra., may be organized under the procedure provided by Sections 233.170 to 233.315, but for our present purpose it will be unnecessary to discuss the details of such procedure, except to say that same is begun with the filing of a petition for organization of the proposed district, with the county court of the county in which such proposed district is located. The petition shall contain a majority of the signatures of landowners, the number of acres of land of each owner, and total acreage of the district and boundaries of the proposed district.

If no remonstrances of such landowners are filed, or if file are overruled, then in due time and in accordance with the statutory procedure, the county court shall enter its order of record incorporating the special road district as a political subdivision of the state for governmental purposes, and with the powers conferred upon it by law, especially those provided by Section 233.175.

A careful examination of Sections 233.170 to 233.315 reveals the county court has not been granted any power by said sections to alter the boundaries of a special road district in such a manner as to add or take territory from the district after its incorporation as the court may desire. In the absence of any statutory grant to the county court to alter the boundaries of a special road district as stated above, the county court lacks such power and cannot alter the boundaries of the road district in any manner.

While it is true, Sections 233.290 and 233.295 provide the statutory procedure which may be instituted in the county court for disincorporating a special road district, but in no way does it authorize the court to take territory from or to add territory to a special road district which is still legally in existence.

Section 231.010, supra., authorizing the county courts of all non-township organization counties to change the boundaries of the road districts of the county as the public interests may require, has reference to the common road districts, as is pointed out in opinions of this office written for Honorable Mayte B. Hardie, Prosecuting Attorney of Christian County, Missouri, on March 8, 1966 (150-1966) and Honorable Bernard Simcoe, State Representative, Callaway County, Missouri, on February 7, 1964 (35-1964), copies enclosed.

The road districts mentioned in Section 233.170, supra., have reference only to special benefit assessment road districts, govern-

Honorable Anthony McConnell

ed by Section 233.170 to 233.315 RSMo. 1959. They are not the same, nor do they have any connection or relation to the common road district referred to in Section 231.010, supra. Consequently, there is no conflict between Section 231.010 and 233.170, supra.

In view of the foregoing, our answer to your inquiry is that the county court of a non-township organization county has been granted no power, and cannot, under provisions of Section 231.010 RSMo. 1959, change the boundaries of two special benefit assessment road districts of such county, organized under provisions of Section 233.170 to 233.315 RSMo. 1959, in such a manner as to take territory from the first district, and add same to the common road district of the county, and take territory from the common road district and add it to said second district.

CONCLUSION

Therefore, it is the opinion of this office that the county court of a non-township organization county has not been granted the power under provisions of Section 231.010 RSMo. 1959, to change the boundaries of two special benefit assessment road districts of the county, organized under provisions of Section 233.170 to 233.315 RSMo. 1959, in such a manner as to take territory from the first district and add it to the common road district of the county, and take territory from such common road district and add it to the second district.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Paul N. Chitwood.

Yours very truly,



NORMAN H. ANDERSON
Attorney General

Enclosures: Opinion 150-1966, Hardie
Opinion 35-1964, Simcoe