

ROAD DISTRICTS:

Specials under Article 10, Chapter 46
R. S. Mo. 1939, may buy rock quarry,
but cannot lease.

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Honorable Phil H. Cook
Prosecuting Attorney
Lafayette County
Lexington, Missouri

Dear Sir:

This will acknowledge receipt of your letter of
June 23, 1943 as follows:

"A special road district in Lafayette County organized and existing under the provisions of Article 10 of Chapter 46 of the 1939 Revised Statutes of Missouri desires to purchase or lease for a period of ninety-nine years twenty acres of land, on which is located a rock quarry and great quantities of rock needed by the special road district for road purposes. The commissioners can save the special road district a considerable amount of money by making an out-right purchase or a long-term lease on the land, rather than buy rock as it is needed for the roads.

"Will you please furnish me with an opinion as to whether or not the special road district can purchase this land and take a deed therefor, or enter into a long-term lease for this land, assuming, of course, that in so doing the special road district does not violate the provisions of Section 8702 of the 1939 Revised Statutes of Missouri."

The law recognizes that Special Road Districts organized under Article 10, Chapter 46, R. S. Mo. 1939, will have to acquire supplies of rock and gravel in connection with construction and maintenance of roads. For example, Section 8683 speaks of "maintaining macadam, gravel, rock or paved roads"; Section 8685 provides that said districts may "repair, grade,

gravel, macadamize, pave or otherwise improve" certain roads; and Section 8700 authorizes such districts to "repair, grade, gravel, macadamize or pave any road in its district".

The powers vested in the Board of Commissioners of such road districts to enable them to carry out their duties are contained in Sections 8682 and 8687, R. S. Mo. 1939. Section 8682 provides in part:

"* * * said board shall at all times keep the public roads under its charge in as good repair as the means at its command will permit, and for this purpose may employ hands at fixed compensation, rent, lease or buy teams, implements, tools and machinery, all kinds of motor power, and all things needful to carry on such road work: * * * * *"

It will be noted that this section authorizes the board to "rent, lease, or buy * * * all things needful to carry on such road work", but we do not feel such language, in view of the context in which it appears, is authority for the board to lease or buy a rock quarry. We say this because of the ejusdem generis rule of construction. In McClaren v. G. S. Robins & Co., Mo. Supp., 162 S. W. (2d) 856, 858, it is stated:

"The ejusdem generis rule is that where a statute contains general words only, such general words are to receive a general construction, but, where it enumerates particular classes or things, followed by general words, the general words so used will be applicable only to things of the same general character as those which are specified."

It can hardly be said that gravel and rock are of the same general character as teams, implements, tools, machinery and motive power. Consequently, the broad language "all things needful to carry on such road work" cannot be construed as including gravel and rock so that the board can be said to have authority under Section 8682 to "rent, lease or buy" a rock quarry. Particularly is this true when it appears that Section 8687 deals with the board's powers to acquire "material" which

July 15, 1943.

is to be used in constructing, improving or repairing roads.

Section 8687 provides:

"Such board may buy all material which may be used, directly or indirectly, in constructing, improving or repairing any public highway or bridge in its district
* * * *".

In our opinion, gravel and rock are "materials" for use in construction and repair of roads and the authority to acquire such is derived solely from Section 8687. That section does not authorize the board to "rent or lease" such material, but only authorizes the board to "buy" the same. Therefore, it would appear that while the board has authority to buy a rock quarry for the purpose of having a supply of gravel and rock for road purposes, it does not have authority to lease a rock quarry.

CONCLUSION

It therefore is our opinion that a Special Road District organized under Article 10, Chapter 46, R. S. Mo. 1939, has authority to buy a rock quarry in order to obtain rock for road purposes, but that it does not have authority to lease such a quarry.

Respectfully submitted,

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APPROVED:

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