

ROADS AND BRIDGES - Right of county court to change boundaries of road districts and to appoint no road overseers.

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January 26, 1934.

Hon. W. H. Crockett,  
Prosecuting Attorney Hall County,  
New London, Missouri.



Dear Sir:

A request for an opinion has been received from you under date of December 17, 1934, such request being in the following terms:

"I am writing you at the request of the incoming County Court who desire to do away with Road Overseers, it seems. I told them that they might do as Marion County has done viz: divide the county into two districts but that they would have to wait until January 1938 in compliance with Section 7868. I am agreeing with the new court that a road overseer is like a fifth wheel to a wagon. Since we have large machinery the county is a small unit and the Highway Engineer can readily look after all the roads. The overseers simply ride the grader or tractor when the county outfit comes around to their district and charge per diem for being along.

I do not like to ask your opinion on something that is set out very plainly in the statute however.

Would the county court have any discretion about making appointments according to Section 7870?"

I

RIGHT OF COUNTY COURT TO ALTER ROAD DISTRICTS

R. S. Missouri, 1929, Section 7868, provides 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

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"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."

This provision, as you observe in your letter, plainly authorizes the county court of a county not under township organization and governed as to its roads by Article 3 of Chapter 42, in which the above section is found, during the month of January of every even numbered year, to change the boundaries of any road district, and, as there is no restriction on the county court as to the number of districts into which a county may be divided, providing the division makes the districts of suitable and convenient size, road mileage and taxable property, no objection would appear to having a county divided into two or even one road district, if circumstances warranted such a division.

## II

### NECESSITY OF ROAD OVERSEERS

R. S. Missouri, 1929, Section 7870, provides in part as follows:

"All road overseers shall be appointed by the county court of the county at the February term of said court. \* \* \* Such officers shall receive a compensation of not less than two nor more than three dollars per day for each day actually and necessarily employed as such overseer, to be fixed by the county court annually in the month of March, by order of record."

The first sentence of this section shows that road overseers can only come into being upon appointment by the county court, and there is no provision in the statutes requiring the county court to appoint any certain number of road overseers. From this section it would seem that the number of road overseers and their compensation is left in the discretion of the county court, provided, of course, that the county court makes its appointments on a fair consideration of the needs of road districts of the county. The tenure of office of road overseers likewise is not explicitly provided in the statutes, although it is indicated with some clearness by the part of Section 7870 above quoted, which shows that all road overseers are to be appointed at the February term of the county court, and their compensation fixed in the month of March by the county court, and since there is nothing in this section saying that these appointments shall be

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made in any particular years (as for example the provision in Section 7868, above quoted, showing that the boundaries of road districts may be changed during January of 1918 and biennially in the same month thereafter), the inference seems justified that the terms of these road overseers are from year to year. This being the case, and the county court not being required to appoint any certain number of overseers, it follows that the county court, if it reasonably judged that no road overseers were necessary, could make a finding to this effect and not appoint any road overseers in any given February term for that year.

### III

#### COUNTY HIGHWAY ENGINEER

R. S. Missouri, 1929, Section 6013, provides in part as follows:

"The county highway engineer shall have direct supervision over all public roads of the county, and over the road overseers and of the expenditure of all county and district funds made by the road overseers of the county."

From this section it is noted that a failure of the county court of a county not under township organization, and governed as to its roads by Article 3 of Chapter 42, to appoint road overseers in a county where there was a county highway engineer, would still leave a public official under the statutory duty of supervising the roads of that county, and consequently would not create a situation where no person or group would have any direct responsibility for the maintenance of the roads of that county.

In conclusion it is our opinion that the county court of any county not under township organization, and governed as to its roads by Article 3 of Chapter 42, has authority, during the month of January in any even numbered year, to change the boundaries of any road district in that county, even though the change might result in the continued existence of only two road districts, and that such county court could, if the reasonable needs of the county justi-

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fied such a step, fail to appoint any road overseers during the February term of such court in any year, thus in effect doing away with road overseers for that county for that year.

Very truly yours,

EDWARD H. MILLER  
Assistant Attorney General

APPROVED:

ROY McKITTRICK  
Attorney General