

ROAD DISTRICTS:

SPECIAL:

Special Road District, organized under Article 11, Chapter 46, Revised Statutes of Missouri, 1939 must bear costs of proceedings to dissolve such district. If County Court decides against dissolution, costs must be borne by petitioning landowners.

March 2, 1950.



Honorable William Lee Dodd,
Prosecuting Attorney,
Ripley County,
Doniphan, Missouri.

Dear Mr. Dodd:

We have your recent request for an opinion from this office. Your letter of request is as follows:

"The landowners of Pratt Special Road District, Ripley County, Missouri, filed a petition to have the district disorganized. Who must pay the cost in the proceedings? Does it make any difference as to whether the district is dissolved or not as to who pays the cost?"

You have since informed us that the Pratt district was formed under Chapter 46, Article 11, R.S. Mo., 1939. Section 8731 of Article 11, supra, provides for the dissolution of a special road district as follows:

"Whenever a petition, signed by the owners of a majority of the acres of land, within a road district organized under the provisions of this article shall be filed with the county court of any county in which said district is situated, setting forth the name of the district and the number of acres owned by each signer of such petition and the whole number of acres in said district, the said county court shall have power, if in its opinion the public good will be thereby advanced to disincorporate such road district. No such road district shall be disincorporated until notice be published in some newspaper published in the county where the same is situated for four weeks successively prior to the hearing of said petition."

The section set out above is silent on the matter of costs; nor does any other section in Article 11, supra, specifically

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provide for the assessment of costs in case of a dissolution. We must therefore resort to the general law, as well as implications gathered from other sections of Article 11. Your letter asks two questions, that is, who pays the costs if the district is not dissolved, and who pays if it is. Upon whom the burden ultimately falls is discussed below, but at this point it seems clear that the initial costs, such as filing fees, advertising, etc. must be paid in the first instance by those who initiate the action, i.e., the landowners in the Pratt District.

Section 13403 R.S. Mo. 1939 provides in part as follows:

" * * * Fees of clerks of county courts. -
The clerks of the county courts, respectively,
shall be allowed fees for their services as
follows:

For reading and filing every petition, and recording the order made thereon, to be paid by the petitioners40

For copying the petitions, orders, plats and surveys of roads and all other records pertaining thereto, for every hundred words and figures, to be paid by the petitioners10"

Assume then, that the petitioners have borne the expenses to the point of actual decision, what would be the effect, upon responsibility for costs, of a decision that the district be dissolved?

Section 1406 R.S. Mo. 1939 is as follows:

"In all civil actions, or proceedings of any kind, the party prevailing shall recover his costs against the other party, except in those cases in which a different provision is made by law."

The effect of this statute would be to return the costs to the petitioner if the district were in fact dissolved. In such event the road district would be the logical party to bear

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the costs and the following parts of Article 11, supra, so indicate.

Article 11, Section 8715, provides in part as follows:

" * * * All revenue so set aside and placed to the credit of any such incorporated district shall be used by the commissioners thereof for constructing, repairing and maintaining bridges and culverts within the district, and working, repairing, maintaining and dragging public roads within the district, and paying legitimate administrative expenses of the district, and for such other purposes as may be authorized by law."

Section 8721, supra, provides in part as follows:

" * * * All money collected on special tax bills and all money the commissioners may so borrow, and all interest that may accrue thereon while on deposit in any county depository, shall be used, and warrants drawn on the treasurer therefor, for the following purposes only: To pay the cost and expense incurred by the commissioners, as found by the court, in the preparation of such plans, specifications, estimate, map and profile, and said list of lands, and a reasonable attorney's fee, as found by the court, for such petitioners, and to pay the cost of improving said public road or part of a public road in accordance with the plans and specifications so filed with the clerk of the county court, and such working, administrative and incidental expenses, not otherwise provided for by law, as may be incurred in making such improvement and in procuring, collecting and paying the cost of such improvement, * * *"

Section 8734, supra, providing for duties of trustee of dissolved road district is as follows:

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"The trustee shall have power to prosecute and defend to final judgment all suits instituted by or against the road district, collect all moneys due the same, liquidate all lawful demands against the same, and for that purpose shall sell any property belonging to such road district, or so much thereof as may be necessary, and generally to do all acts requisite to bring to a speedy close all the affairs of the road district, and for that purpose, under the order and direction of the county court, to exercise all the powers given by law to said road district."

The sections of Article 11, set out above, strongly indicate that the road district funds shall bear the expenses connected with the organization, maintenance and dissolution of a road district, such as the one with which we are here concerned.

It is therefore our opinion that the costs of dissolving a road district organized under Article 11, Chapter 46, R.S. Mo., 1939, must be borne by the road district itself, and that all costs incurred by the successful petitioners should be returned to them.

If, on the other hand, the county court, in its discretion determines that the road district should not be dissolved, the petitioners, as the unsuccessful party, must bear the costs in accordance with the rule established by Section 1406, supra.

CONCLUSION

It is the opinion of this office that if a special road district, organized under the provisions of Article 11, Chapter 46, R. S. Mo., 1939, is dissolved by the county court, the costs of such proceeding must be borne by the road district. If, on the other hand, the county court decides against dissolution, all costs must be borne by the petitioning landowners.

APPROVED:

Respectfully submitted,

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