

TOWNSHIP: Authority of Township Board to require an audit of road and bridge moneys for two years preceding April, 1943.

July 23, 1943

Honorable Andrew Field
Prosecuting Attorney
Caldwell County
Hamilton, Missouri



Dear Sir:

This will acknowledge receipt of your request for an opinion under date of July 16, 1943, which reads as follows:

"This county (Caldwell) has Township Organization. One of the present Township Boards of the county, upon petition of taxpayers of that township, desires to have an audit of the road and bridge moneys of that township covering the two years preceding April, 1943, when the present Board took office.

"Kindly advise (a) whether a Township, in a county having Township Organization, through its Township Board, has authority to have the books, covering its road and bridge moneys collected and spent during the preceding two years, audited. If so (b) whom may such Board procure as auditors for such auditing? (c) What provision is there, if any, for the payment of such an audit?

"(d) If such township board has no authority to have its books audited, what provision is there, if any, for such an audit?"

You inquire if the present Township Board may have an audit made showing the collections and expenditures of road and bridge funds for the two years preceding April, 1943.

It appears to the writer that the Township Board should have this information on file for the reason that under the present law, Section 8817 R. S. Missouri, 1939, it requires the

road overseer to make, under oath, a detailed report to the Township Board at each regular meeting and a final report on or before the 20th of March, next after his appointment:

"It shall be the duty of every road overseer to make a detailed report and settlement, under oath, to the township board at each regular meeting thereof, and on or before the twentieth day of March next after his appointment he shall make final report, under oath, of all moneys received and expended by him, and from what source received and on what account expended, and final report of the disposition of all tools, machinery, books, papers and other property received by him as such overseer and belonging to such township or road district, and shall settle in full with said board for all moneys which he may have belonging to such road district or which may be owing by him to such district, and shall deliver to said board all tools, machinery, books, papers and other property belonging to such township or road district and received by him as such overseer."

Section 8630, R. S. Missouri, 1939, further provides that the Township Board shall keep a full, true and correct record of all money received and disbursed on account of roads and bridges, and between the first and tenth day of March of each year shall cause to be published an itemized statement of same, and a certified copy shall be left in the office of the County Clerk.

Therefore, in lieu of the above and foregoing statutory provisions, it does seem that such an audit should be unnecessary unless the above requirements of the law have not been fully enforced.

The Township Board is of statutory creation and has only such authority as granted by such statutes. It is an agent of the township with limited statutory authority. In *Jensen v. Wilson*, 145 S. W. (2d) 372, l. c. 374, the Court said:

"* * * A township board functions not as a court of broad jurisdiction but as the agent of the township with limited authority. Con-

sequently, it is even more essential that its authority be exercised in strict compliance with the powers granted to it. Such a board comes under the same rule as a county court. A county court is only the agent of the county with no powers except those granted and limited by law, and like all other agents, it must pursue its authority and act within the scope of its powers.* * * * *

Notwithstanding the fact that such information should already be in the hands of the Township Board, we are of the opinion that the present Township Board, if they consider it an absolute necessity, may have an audit made without further delay. Section 13976, R. S. Missouri, 1939, reads as follows:

"In each township in this state, organized under the provisions of this chapter, there shall be a board of directors, composed of the township trustee and members of the township board, whose duty it shall be: First, to audit all accounts of township officers for services rendered as such officers except the township assessor, for services as such assessor; second, to audit all other accounts or demands legally presented to them against the township; third, to levy all taxes for township, road and bridge purposes, and all other duties provided by this chapter for the township board of directors to perform."

The above provision states what the duties of the Township Board shall be. One duty is that it shall audit all accounts with township officers for services rendered as such officers and furthermore that it shall audit all other accounts or demands legally presented to them against the township. As stated in State ex rel. Carpenter v. City of St. Louis, 2 S. W. (2d) 713, that the word "shall" in a statute, though imperative where the public has a right that ought to be exercised or endorsed, it may be directory or permissive.

We are of the opinion that a road overseer is a township officer. His duties are usually coextensive with the boundaries of the township, he takes an oath of office entering upon his official duties and he is under a bond to the township for the

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faithful performance of his duty. He also is appointed by the Township Board subject to removal by said Board.

CONCLUSION

Therefore, in view of the road overseer being a township officer and Section 13976, supra, specifically requiring the Township Board to audit all accounts of the township officers, it is the opinion of this department that in the absence of the Township Board having in their possession such an audit that the Board may have an audit made of the road and bridge moneys for the two years immediately preceding April, 1943. Furthermore, the Board may employ any person competent to make such an audit and pay for his services as provided by statute for other necessary expenditures.

Respectfully submitted,

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APPROVED:

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