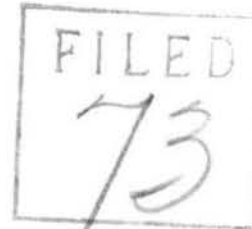


SPECIAL ROAD DISTRICTS:

Road Districts composed in part of two special road districts would not be liable for the bonded indebtedness of said road districts.

February 6, 1935. 5-16

Hon. J. T. Pinnell
Prosecuting Attorney
McDonald County
Pineville, Missouri



Dear Sir:

This is to acknowledge receipt of your letter, requesting an opinion, which reads as follows:

"A proposed special road district made up of territories partially within two different special road districts and partially of territory not within a special road district, desires to form a special road district. The two special road districts have voted bonds which are yet outstanding; the question is, in the event should this new district be formed would it be liable for its part of the bonded indebtedness of the two special road districts partially within its bonds?"

Section 8068, R. S. Mo. 1929, provides in part as follows:

"The commissioners of such districts so incorporated shall have power to issue road and bridge bonds for and on behalf of their respective districts, payable out of funds derived from taxation of all property taxable therein to an amount including existing indebtedness payable out of funds so derived not exceeding five per centum of the

assessed valuation of such property to be ascertained by the assessment next before the last assessment for state and county purposes. ***** If it shall appear that two-thirds of the voters voting at said election on said question shall have voted in favor of the issue of said bonds, the commissioners shall order and direct the execution of the bonds for and on behalf of such district and provide for the levy and collection of a direct annual tax upon all the taxable property in the district sufficient to provide for the payment of the principal and interest of the bonds so authorized as they respectively become due. *****

Section 8067, R. S. Mo., 1929, reads:

"The board of commissioners of any district so incorporated shall have power to levy, for the construction and maintenance of bridges and culverts in the district, and working, repairing and dragging roads in the district, general taxes on property taxable in the district, and shall also have power and authority and be its duty to levy special taxes for the purpose of paying the interest on bonds when it falls due and to create a sinking fund sufficient to pay the principal of such bonds at maturity; and, whenever such commissioners shall, at any time between the first day of January and the first day of March of any year, file with the clerk of the county court a written statement that they have levied such tax, and stating the amount of the levy for each hundred dollars assessed valuation, the county clerk, in making out the tax books for such year shall charge all property taxable in such district with such tax, and such tax shall be collected as county taxes are collected. Whenever it shall be made to appear to

the state auditor that the board of commissioners has failed or neglected to comply with this section in making provision for the payment of interest on and the principal of bonds issued it shall be the duty of the state auditor, on or before the first day of May to perform and discharge the duties of the board of commissioners in so far as it is its duty to levy special taxes for the purpose of paying the interest on and the principal of bonds issued. *****

Section 8081, R. S. Mo. 1929, reads in part:

"Whenever any owner of land within any road district organized under the provisions of this article shall file with the county court of the county in which such district may be located a petition verified by an affidavit stating that such road district has no commissioners and has failed to elect commissioners at any regular election of the district, or has failed to hold a special election to fill any vacancy in the office of commissioner, or that such road district has ceased to perform the functions for which it was created, the county court shall cause five notices to be posted in conspicuous places in said district, giving notice of the filing of such petition, and that unless cause be shown to the said court on a day to be named in said notices, not less than thirty nor more than sixty days from the time of posting such notices, why the said road district should not be dissolved, that the same will be dissolved; *****
Provided further, that nothing in this article shall affect the validity of any bonds that may have been issued by such road district or affect the levy or collection of any special taxes that may have levied

or assessed against any lands within such district: Provided further, after the dissolution of any such special road district the land therein shall be divided into road districts under the provisions of article 3, chapter 42, and any money that may be on hand to the credit of such special road district, that shall not be needed to satisfy any liabilities of such special road district, shall by order of the county court, be turned over to such new road districts in proportion to the number of acres allotted to each such new district. ***

A reading of the above sections shows that the commissioners of the road district have power to issue road and bridge bonds payable out of funds derived from taxation on all property taxable within the district, when two-thirds of the voters voting at an election vote in favor of the issue of said bonds; and it is their duty to levy special taxes for the purpose of paying interest on the bonds and to create a sinking fund sufficient to pay the principal of such bonds at maturity. If the board of commissioners fail to make provisions for the payment of interest on and principal of bonds issued, the state auditor shall levy special taxes for paying interest on and principal of the bonds issued. Section 8081, supra, provides that the dissolution of a road district shall not affect the validity of bonds that may have been issued, or affect the levy or collection of any special taxes that may have been levied or assessed against any lands within such district.

In the case of Embree v. Road District, 257 Mo. 593, 1. c. 620 and 621, also 622, the Court, in passing upon the question as to whether the bonds issued by a road district were the obligation of the road district or simply evidences of an indebtedness payable out of the proceeds of the special tax bills issued against the lands embraced in the district, said:

"The indebtedness voted by the landowners, whether payable by a single assessment or several constitutes liens upon the respective tracts of land in the district, in proportion to their respective values, and must be paid severally by each landowner, whether paid in bulk or in annual installments. If in bulk, the pay-

ments would have been made payable to the contractor, because in such case the tax bill would have been made payable to and delivered to him, but if in installments, then they would have been payable to the county collector, and by him turned over to the county treasurer, and by him paid to the bond-holders, whoever they might be.

"This is not controverted by counsel for appellants, but they insist that there is no provision contained in said article 7 of the statutes which authorizes the issuance of such bonds, containing a clause showing that they are only payable out of the special benefits collected, and, therefore, they must be considered and treated as the bonds of the district and not simply evidences of an indebtedness, only payable, as previously stated, out of the proceeds of special tax bills issued for benefits imposed against the several tracts of land in the district, and collected in the manner therein provided for.

"This contention is unsound for two reasons: first, because the statute does not undertake to prescribe the form of the bonds to be issued, and the presumption is that the officers charged with their execution, will issue bonds in harmony with the provisions of the statutes authorizing their issuance and the purpose for which they are executed and the means of their payment.

"If those mandates of the statutes are complied with, the bonds upon their face, as well as the statutes authorizing their execution, which must be read into the face of the bonds, will conclusively show that

they are not the bonds of the road district, but simply evidences of an indebtedness payable out of the proceeds of the special tax bills issued against the lands embraced in the district, for the benefits mentioned.

"And the second reason mentioned for saying that said bonds are not obligations of the road district is this: That in considering the nature and character of the bonds in question it is the duty of the court and all parties dealing with them, to read and consider in connection therewith the entire article of the statute bearing thereon and authorizing their execution; and by so doing it will clearly appear that no authority is given to any officer of the county or road district to levy or collect any tax with which to pay said bonds, except the special assessments authorized for the improvements mentioned, which are for the benefit of the respective landowners, and not for the benefit of the district itself. Moreover, the district as such, has no means out of which it could pay said bonds, nor any authority to make assessments therefor, except in the manner previously stated, which conclusively shows that the indebtedness is against the lands and not against the road district."

In view of the foregoing statutes and the construction placed upon them by the Supreme Court, we are of the opinion that a new special road district composed of two former special road districts would not be liable for any part of the bonded indebtedness of the two special road districts. However, the

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bonded indebtedness of the two special road districts would be a lien upon the respective tracts of land located in the districts in proportion to their respective values and must be paid severally by each land owner.

Very truly yours,

James L. HornBostel
Assistant Attorney-General.

APPROVED:

ROY McKITTRICK
Attorney-General

JET/JLH:afj