

SPECIAL ROAD DISTRICTS: Oral agreements with municipal corporations and executed on both sides cannot be repudiated.

10-31

October 10, 1935.

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Honorable Daniel C. Rogers,  
Attorney at Law,  
Fayette, Missouri.

Dear Sir:

We acknowledge your recent letter wherein you state as follows:

"Receipt is acknowledged of letter dated August 13th, containing an opinion written by Assistant Attorney General John W. Hoffman, Jr. This opinion pertains to the question of whether or not the Fayette Special Road District may make several refunds to individuals who contributed various amounts of money in 1920 or 1921 for the building of a mile of Chat road running North of Fayette one mile.

"I agree with the opinion in respect to what it presents with reference to the Statutes of Fraud, Section 2967, R. S. Missouri 1929. However, after studying the matter, it would seem that it is necessary to take Section 2962 into consideration. This Section provides that:

"No county, city, town, .....or other municipal corporation shall make any contract, unless the same shall be within the scope of its powers or be expressly authorized by law, .....; and such contract including the consideration, shall be in writing and dated when made, and shall be subscribed by the parties thereto ....."

"Is not the Fayette Road District a municipal corporation? If so, it would seem that even

if an oral promise was made by the Special Road District at the time to repay the individuals who made the donations, it would not be legal so to do.

"We would much rather pay these refunds than not to pay them. But if the statutes concerning oral promises applies in this case, as it so clearly seems to me to apply, it would seem that a district cannot make refund to these individuals. If you will supplement your opinion in a manner which reasonably shows that I am mistaken with reference to the application of Section 2962 concerning an oral promise, I shall be only too glad to recommend to the Fayette Special Road District that these individual refunds should be made, provided that there was not more than one year elapsed between the time the oral promise was made and the effective date of the Refund."

Supplementing our opinion of August 13 holding "that the Fayette Special Road District, having received a refund of the aforementioned funds, must now, under the terms of the agreement, pay same over to the individual donors, and on refusal to comply makes itself subject to suit", we respectfully call your attention to the very recent case of the State of Missouri, at the Relation of the County of St. Louis, Missouri vs. State Highway Commission (not yet reported), wherein the court had the following to say with reference to oral agreements:

"Two questions have been suggested, (1) a verbal agreement that the county would secure and pay for the right-of-way if the state would take the road over is not binding on either party, and (2) \* \* \*."

"Answering the first question, the agreement, if verbal, was not binding on either party and was therefore non-enforcible so long as it remained executory. But as both parties acted thereunder and completely performed the agreement, neither can now repudiate it."

In the case at bar the verbal agreement between the individuals who contributed various amounts of money to the

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building of the road and the Fayette Special Road District was non-enforceable so long as it remained executory, but under the reasoning of the foregoing case, we are of the opinion that since "both parties acted thereunder and completely performed the agreement, neither can now repudiate it", and the Fayette Special Road District should now pay over to the individuals the various amounts due them under the agreement.

Yours very truly,

ROY MCKITTRICK,  
Attorney General.

MW:HR