

SPECIAL ROAD DISTRICTS:



Commissioners of Special Road Districts organized under Secs. 233.170 to 233.315, inclusive, RSMo 1949, have the exclusive control over the property and funds of such districts. Such funds cannot be used for any purpose other than that for which such funds are collected. Prevention of deviation in the use of such funds may be invoked by owners of real estate in such district. The County Courts have no statutory authority in such matters. County Courts do have authority to dissolve Special Road Districts.

September 5, 1953

Honorable Frank Schanzmeyer  
Honorable Joe Stock  
Honorable Paul H. Haslag  
Judges of the County Court of  
Osage County  
Linn, Missouri

Gentlemen:

This will be in response to your request, in writing, for the opinion of this office respecting some named incidents to the government of Special Road Districts in your county. Your letter requesting an opinion states the following:

"Our proposition is that Osage County, Missouri, has a number of Special Road Districts in the county. One of said Special Road Districts in Osage County is spending some of the money collected for that Special Road District on (private roads leading from the privately owned homes out to the main road) popularly called by-roads, although it has a state approved but no public county roads within such district. The County Court wants to know whether such expenditure by the Special Road District of its funds for such 'by-roads' is lawful and proper.

"The Court wishes to know whether before funds derived from taxes assessed against property located within the boundaries of a Special Road District may be lawfully and properly spent on such by-roads is it necessary for the Special Road District to be dissolved? The Court also desires to know what proceedings must be had to dissolve a Special Road District?

"The Court also wishes to know where some of the property owners conveyed right of way voluntarily at an agreed figure and others required their right of way condemned, whether it is proper for a

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special road district to pay the property owners who conveyed their right of way voluntarily, additional sums after the right of way was conveyed and the original agreed price paid; the additional payments being over and above the agreed price for the right of way; the payments being made to whom and for what amounts that the commissioners in the district desired to pay. The Court desires to know whether a special road district can voluntarily refund to the taxpayers in a special road district moneys collected for the roads; without expending the said moneys upon the roads."

Your letter requests the opinion of this office on each of the five separate questions as follow:

- QUESTION 1: May funds of a Special Road District be lawfully expended on private roads commonly called "by-roads", leading from privately owned homes out to a public road.
- QUESTION 2: Before such funds of a Special Road District may be expended on such "by-roads" is it necessary for such Special Road District to be dissolved.
- QUESTION 3: What proceedings must be had to dissolve a Special Road District.
- QUESTION 4: May the Commissioners of a Special Road District pay property owners, who have voluntarily conveyed their respective rights-of-way to the district for public roads for an agreed price as compensation, additional sums after such rights-of-way have been conveyed and the compensation agreed upon has been paid to such persons.
- QUESTION 5: May Commissioners of a Special Road District refund to taxpayers in such district funds of the district.

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You recite in your letter that there are several Special Road Districts in Osage County, Missouri. These districts, we understand, are organized, incorporated and maintained as Special Road Districts--Benefit Assessments--Counties Not Under Township Organization, as authorized under Sections 233.170 to 233.315, inclusive, RSMo 1949. Under Chapter 233, when the procedure before a County Court, provided by the statute for the incorporation of Special Road Districts, has been carried out, the County Court shall make an order incorporating a Special Road District, as provided in Section 233.175 of said chapter and such road district shall thereupon become by the name mentioned in such order, a political subdivision of the State for governmental purposes with all powers mentioned in said section, and such other powers as may be conferred by law. At the term of Court in which such order is made, or at any subsequent term thereafter, the Court shall appoint three Commissioners who shall be residents of the district, and owners of land therein, who shall hold their office until the first Tuesday after the first Monday in January thereafter. On said date the voters of the district at the hour and place to be fixed by the Commissioners, shall elect three Commissioners, one of whom shall serve one year, one for two years, and one for three years, and on the first Tuesday after the first Monday in January of each year they shall elect a Commissioner to take the place of the one whose term is about to expire, who shall serve three years.

The statutes require that the Commissioners so appointed and qualified shall meet at such time and place within such district as fixed by the County Court at the time of their appointment or as they may, in writing, agree upon, and organize by electing one of the number President, one Vice President and another Secretary. The Treasurer of said Board shall be the County Treasurer and shall be responsible on his bond for the faithful keeping of all money deposited with him by reason of this law. All money paid to the County Treasurer and placed to the credit of the district, shall be paid out only on warrants signed by the President or Vice President and attested by the Secretary, except as may be otherwise authorized by law. The President of the Board shall sign all warrants that may be drawn upon the treasury for the payment of any money out of the treasury on account of the funds belonging to said district, and in a general way do all the acts and things that said Board may empower him to do, and such others as may be authorized

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by law.

Section 233.190 of said chapter provides that upon the organization of such Commissioners, the County Court shall cause all tools and machinery used for working roads belonging to the districts formerly existing and composed of territory embraced within the incorporated district to be delivered to said Commissioners, for which such Commissioners shall give a receipt, and such Commissioners shall keep and use such tools and machinery for constructing and improving public roads and bridges. Said section, in subsection 2, further empowers the Commissioners as follows:

"2. Said commissioners shall have sole, exclusive and entire control and jurisdiction over all public highways, bridges and culverts within the district, to construct, improve and repair such highways, bridges and culverts, and shall have all the power, rights and authority conferred by law upon road overseers, and shall at all times keep such roads, bridges and culverts in as good condition as the means at their command will permit, and for such purpose may employ hands and teams at such compensation as they shall agree upon; rent, lease or buy teams, implements, tools and machinery; all kinds of motor power, and all things needed to carry on such work; provided, that said commissioners may have such road work, or bridge or culvert work, or any part thereof, done by contract, under such regulations as said commissioners may prescribe."

Subsection 2 of said Section 233.190, clearly implies, we believe, that the Board has the power to use district funds to pay the cost involved in the performance of such duties.

There is, however, express authority and direction that the district shall be the owner of funds set apart to the district and for the expenditure by the Board of district funds. Subsection 3 of said Section 233.225 so providing, reads as follows:

"3. The county treasurer shall receive payments of such special tax bills and keep a

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record of each payment and of the name of the party making same, and shall cancel such special tax bills as they are paid, and shall give such district credit for the amount of each payment to him on a special account kept with said district of payments to him on account of such tax bills, indicating therein the amounts paid as principal of such special tax bills and the amount paid as interest. Whenever any of such tax bills has been canceled by the county treasurer and is exhibited to the clerk of the county court, or the county treasurer reports payment of any such special tax bills to the clerk of the county court, he shall note the payment thereof in said record book."

Subsection 4 of Section 233.235 of said Chapter 233, respecting district monies, states the following:

"4. The county collector shall pay to the county treasurer all money collected on said special tax bills and the county treasurer shall give such district credit therefor on a special account kept with said district on account of collections on said tax bills, indicating therein the amount paid as principal, and the amount paid as interest and penalties."

Section 233.195 of said chapter identifies another source of money which contributes in part to the funds of a Special Road District provided for in Section 137.555. Said Section 233.195, in that particular, and providing for the exclusive use of such identical funds on roads, bridges and culverts within any such district, reads as follows:

"County courts shall cause to be set aside and placed to the credit of each road district so incorporated four-fifths of such part or portion of the tax arising from and collected and paid upon any property lying and being within any such district, by authority of section 137.555. 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

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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."

Subsection 6 of Section 233.225, defining the only purpose for which district money may be used, reads as follows:

"6. 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, and the balance, if any, shall be used in paying expenses of maintaining such improvement; but if any money should be borrowed by the commissioners, it shall be repaid, with interest thereon, out of the collections of such special tax bills as were unpaid at the time such money was borrowed."

We have seen by the terms of the sections of the chapter of the statutes on Special Road Districts cited and quoted herein, that Commissioners of Special Road Districts have complete and exclusive control over the property and funds of the

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district and have express directions as to how and for what purposes--and none other--such district funds shall be expended. Nowhere does any of such sections give the County Court in counties having the benefit assessment special road districts any authority over the property, the funds of such districts or the expenditure thereof. Such funds may be used only for the purposes and by the means provided by the statutes. Such funds may not be diverted to other uses than prescribed in such statutes. Eminent textwork authorities and our Appellate Courts, construing such statutes, so hold. 29 C.J. 739, under the subject "Highways", speaking on this principle states the following text:

"Taxes collected must be paid over to the officers designated by statute to receive and disburse highway funds. Such funds must be used in the manner provided by the constitution or statutes, or designated by the voters, and cannot be diverted to any other purpose. \* \* \*."

Our Supreme Court in the case of Platte City Assessment Special Road District of Platte County vs. Couch, 8 S.W. (2d) 1003, was considering the validity of the expenditure of Special Road District funds where the plans, including the length of a highway under construction, were changed from the plans and specifications filed with the County Court, so that the highway when constructed would be a part of the state highway system and a part of the costs thereof, it was agreed, was to be paid out of the Special Road District funds. The Court held this could not be done, because it would be a diversion of the funds of the Special Road District from the use for which they were assessed and collected and that that use was for the construction of Special Road District roads. The Court, l.c. 1006, 1007, so deciding, said:

"Now, it stands conceded in this case that, before the tax bills had been issued, and perhaps even before the improvement had been ordered by the court, and the assessment made, the commissioners of the road district entered into a private verbal arrangement with the state highway commission, whereby the original project was cast aside and another improvement substituted. The purpose was commendable, and the parties are not subject to criticism; but from a legal standpoint the departure was so glaring that

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we cannot by any stretch of the imagination say the law was followed, or that the improvement agreed upon was substantially the same as that provided for in the prior proceedings, which are the foundation for the tax bills. Not only was the length of the road materially shortened, the course changed, and the construction cost multiplied by  $2\frac{1}{2}$  (nearly), but the road substituted was a state highway, which the law says shall be built at the expense of the state, and we are asked to sustain tax bills issued to pay over a third of the cost of that road."

Reference also was made in that decision to Section 10897, R.S. Mo. 1919, which provided that: "'Any county or other civil subdivision having funds of its own arising from a road tax or bond issue may expend said funds in the building of the state road system' therein." The Court, in holding that the terms of said Section 10897 could not justify the expenditure of a Special Road District's funds on the state road system, under the statutes relating to assessment and the collection of such district funds, l.c. 1007, in said Platte City case, further said:

"But the Legislature evidently did not intend, by this or any of the other sections mentioned, to authorize the diversion of funds raised by special assessment under article 8, c. 98, for one purpose, and their application to another under different auspices. If such were the intention, it could not stand. \* \* \*."

The Kansas City Court of Appeals held to the same effect in the case of Wheat vs. Platte City Benefit Assessment Special Road District of Platte County et al., 59 S.W. (2d) 88. In that case there was also a change in the original plan for the construction of a highway. In that case the funds of the district were borrowed under a statute permitting the borrowing of funds for building a road by the road district under plans already adopted. In holding that such funds of the district could not be used in the construction of a highway under such changed plans the Court, l.c. 90, 91, said:

"It is, therefore, proper to inquire into the reason the statute provides that the money loaned should be used in the construction of



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the road that had been planned. The primary purpose, of course, of this is for the protection of the land owners against whose land the Road District had issued the tax bills, which were liens upon the land. The statute, under which the road was originally projected, shows that the scheme of building the road is always initiated by the land owners themselves. Of course, the law protects them against diversion of the money raised by liens created upon their lands by providing that the money should be spent for the purpose intended."

We believe questions 1, 2, 4 and 5 may be considered and determined in one answer, since they all refer to the disposition, in one particular or another, of Special Road District funds.

We have seen from these statutes that where taxes are collected on tax bills against property in a Special Road District, or from any source, it must be deposited with the County Treasurer who shall place such funds to the credit of that district in a separate fund and such districts thereby become absolute owners, respectively, thereof. We have seen also that such fund may only be used for the establishment and maintenance of roads, bridges and culverts in such Special Road Districts and incidental expenses, and that the diversion of the use thereof from such purposes is contrary to the sections of said Chapter 233 and the decisions of our Courts construing such statutes.

We have also seen that the Commissioners of a Special Road District incorporated as benefit assessment districts in counties not under township organization, have the entire and exclusive control over roads, bridges and culverts and their maintenance, and the funds of their respective districts. The County Courts of counties having such Special Road Districts have no statutory authority to take any official steps to prevent the Commissioners of a Special Road District from using the funds of the district, even if any district funds may have been diverted by using them on roads in such districts other than for the use of which such taxes are collected, or for other purposes mentioned in questions 1, 2, 4 and 5 in your letter. The remedy to prevent the unauthorized expenditure, if any, of district funds must be invoked by the owners of land in such districts against whose lands tax bills are issued

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for the collection of funds belonging to such district. The Commissioners of a Special Road District are not accountable to the County Court for the property or funds of the district or for the management or expenditure of the funds of the district. The County Court has no power to question any of the acts of such Commissioners, in any way. The owners of property in the district only may do that. This will, we believe, fully answer questions 1, 2, 4 and 5 in your letter.

Question number 3 submitted in your letter and hereinabove copied, asks what proceedings must be had to dissolve a Special Road District. The Special Road Districts in Osage County, Missouri, are Benefit Assessment Special Road Districts and Osage County is a county not under township organization. Such districts are governed and controlled by Sections 233.170 to 233.315, inclusive, RSMo 1949, respecting their organization and establishment, the conduct of the business of such Special Road Districts, and the procedure for dissolution, set out in the sections above-numbered. While it is true, as we have observed from the statutes hereinabove cited, that the property and management of such districts are within the exclusive control of the Commissioners of such districts and the County Court of any county containing such Special Road Districts has no governing authority over such districts after their organization and after the order has been made constituting such districts, respectively, subdivisions of the State for governmental purposes, yet the County Court of any such county does have the exclusive right and duty to dissolve any such Special Road District, upon compliance being had with the sections of Chapter 233, RSMo 1949, pointing out the procedure to be followed to dissolve any such Special Road District. The County Courts are given no authority to initiate a proceeding to dissolve a Special Road District. The procedure for the dissolution of any such district is contained in Sections 233.290 and 233.295, RSMo 1949. Each of these sections provides a separate method for placing in motion proceedings to dissolve such Special Road Districts. Section 233.290 provides that, whenever an owner of land within any such road district shall file with the County Court of the county in which such district may be located, a petition, verified by an affidavit, alleging 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 give notice, by posting up five notices in conspicuous places in said district,

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of the filing of such petition, and that unless cause be shown to the 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. The section further provides that if on the day named in the notices no person appears who has an interest in the matter and shows that said district is performing the functions for which it was created or that it has Commissioners or that good cause exists why the said road district should not be dissolved, the Court shall, on the next court day, make its order of record that such road district be dissolved. The section further provides that if any party in interest does appear and show cause, as is in said section provided, the County Court shall proceed to hear evidence on the matter, and if it appears to the satisfaction of the Court that no good cause exists why such road district should not be dissolved, it shall enter its order of record that such road district be dissolved, but, if the contrary appears, the said petition shall be dismissed. This section further provides that upon such dissolution of any such Special Road District the land therein shall be divided into road districts under the provisions of Sections 231.010 to 231.030, 231.050 to 231.100 and 137.555 to 137.575, RSMo 1949, and any money that may be on hand to the credit of such Special Road District that is not needed to satisfy any liabilities of any 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.

Section 233.295 provides a separate and different method from said Section 233.290 respecting the putting in motion, proceedings to dissolve a Special Road District and the dissolution of such district. Said Section 233.295 reads 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 sections 233.170 to 233.315 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

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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."

This section provides that after the petition required by the section is filed with the County Court, notice shall 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, and thereupon the Court shall have power, if in its opinion the public good will be thereby advanced, to disincorporate such road district. This section does not in detail describe the steps and proceedings to be had in the hearing of the petition filed under the terms of said Section 233.295, but it is clear that the Court must have a hearing after the notice required is given to determine if, in the Court's opinion, the public good will be thereby advanced in dis-incorporating such road district. This section requires that the petition to dissolve must be signed by the owners of a majority of the acres of land within such road district. This provision itself, when complied with, would be persuasive evidence to the Court that the wishes of the property owners in the district would be best served by dissolving the district. But there might be other interests of a public nature that would demand that said public road district be not dissolved and that said petition be dismissed. The Court must determine under said section whether the public good will or will not be advanced by the dissolution of such district. The Court would be authorized in the formulation of its opinion one way or the other to take evidence on what does constitute the public good and should give all persons who may appear an opportunity to be heard on the question.

We have seen from the terms of said Sections 233.290 and 233.295 that exclusive power is given to the County Court to dissolve a Special Road District located in its county. The district cannot automatically dissolve itself. We have observed that the majority of property owners within the district cannot alone accomplish a dissolution of the district. They must file their petition for dissolution required by the statute with the Court. Full compliance with the terms of each of said sections must be had in order to dissolve a Special Road District under either of such sections. Upon such compliance the County Court of any such county under either section may make an order of record dissolving a Special Road District.

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CONCLUSION

Considering the premises, it is, therefore, the opinion of this office that:

1) The Commissioners of Benefit Assessment Special Road Districts incorporated under Sections 233.170 to 233.315, inclusive, RSMo 1949, have exclusive control over roads, bridges and culverts and their maintenance, and the funds and the use thereof in their respective districts. The County Courts of counties having such Special Road Districts have no statutory authority to take any official steps to prevent the deviation, if any, in the expenditure of such funds for purposes other than those for which such funds were collected. The remedy to prevent any unauthorized use of such funds must be invoked by the owners of land in such districts whose lands are affected by tax bills issued for the collection of funds for any such district;

2) That proceedings to dissolve a Benefit Assessment Special Road District in this State are set forth in Sections 233.290 and 233.295, respectively, RSMo 1949, which must be followed and fully complied with to dissolve any such Special Road District initiated under either of such sections before such district may be legally dissolved.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. George W. Crowley.

Yours very truly,

JOHN M. DALTON  
Attorney General

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