

ROADS & BRIDGES: Sections 8012 and 8013 do not give county highway engineer the authority provided therein over the Special Road Districts organized under Articles 9 and 10, Chapter 42, R.S. Missouri 1929.

January 20, 1938

Mr. Bert Whitechurch
Surveyor and Highway Engineer
Newton County
Neosho, Missouri



Dear Sir:

This department is in receipt of your letter of January 3, 1938, in which you request an opinion as follows:

"I would like very much to have some advice, regarding Sec. 8012, and 8013, Laws of Missouri, relating to Roads, Highways and Bridges.

"Do the above mentioned sections apply to Special Road Districts not under Township organization."

Section 8012, R.S. Missouri, 1929, is as follows:

"The county highway engineer shall be custodian of all tools, material and machinery belonging to the road districts and to the county, except as may be otherwise provided by law. When delivering to any road overseer the tools and machinery belonging to the district, he shall require from the overseer an inventory and receipt for all such tools and machinery, and the overseer shall be responsible for the proper care and handling of said tools and machinery, and shall see that they are properly kept when not in use, and shall account for the same to the county highway engineer."

Section 8013, R.S. Missouri, 1929, is as follows:

"The county highway engineer shall have direct supervision over all public roads of the county, and over the road overseers and of the expenditure of all county and district funds made by the road overseers of the county. He shall also have the supervision over the construction and maintenance of all roads, culverts and bridges. No county court shall order a road established or changed until said proposed road or proposed change has been examined and approved by the county highway engineer. No county court shall issue warrants in payment for road work or for any other expenditure by road overseers, or in payment for work done under contract, until the claim therefor shall have been examined and approved by the county highway engineer."

In your request, you refer us only to "Special Road Districts" in counties not under township organization and do not state specifically, by referring to particular statutes, the type of district involved under your question. We must then, to be certain we have covered your request, consider all "Special Road Districts" in counties not under township organization.

The District organized under Article 9, Chapter 42, R.S. Missouri, 1929, is a "Special Road District". By Section 8032 of this article, the board of commissioners of said district is made the custodian of all tools and machinery used for constructing and improving the roads of said district.

Section 8033 of this article gives the board of commissioners of said district exclusive control and jurisdiction over all public highways within its limits and authorizes the board to buy, rent or lease implements, tools, machinery, and all kinds of motor power and all other

things necessary to carry on the road work of the district. The expenses thus incurred are paid by a warrant drawn by the board upon the treasurer of said board. (Section 8053).

Thus, we see the provisions of the three above mentioned sections in Article 9, Chapter 42, R.S. Missouri, 1929, are directly in conflict and inconsistent with the provisions of Sections 8012 and 8013, supra.

The district organized under Article 10 of Chapter 42, R.S. Missouri, 1929, is a "Special Road District". By Section 8065 of this article, the commissioners of said district are made the custodians of all tools and machinery used for working roads in the district. The commissioners have sole, exclusive and entire control and jurisdiction over the roads and bridges within the district. The expenses of said district are to be paid by warrants signed by the president and attested by the secretary and drawn upon the treasurer of said board, who is the county treasurer. (Section 8064).

Thus, we see the provisions of the two above mentioned sections in Article 10, Chapter 42, R.S. Missouri, 1929, are also directly in conflict and inconsistent with the provisions of Sections 8012 and 8013, supra.

These two types of districts are the only two districts provided for in counties not under township organization which may be termed as "Special Road Districts".

Sections 8012 and 8013, supra, are general laws relating to the duties of the highway engineer in all counties of this state except those specifically excepted by that article. State ex rel. Bulger, 289 Mo. 1.c. 449. The laws providing the duties of the board of commissioners in the two above mentioned "Special Road Districts" are special laws, and as such, are exceptions to the general law.

In State ex rel. v. Smith, 67 S.W. 2nd, 1.c. 57, it is said:

"It is the established rule of construction that the law does not favor repeal by implication but

that where there are two or more provisions relating to the same subject matter, they must, if possible, be construed so as to maintain the integrity of both. It is also a rule that where two statutes treat of the same subject matter, one being special and the other general, unless they are irreconcilably inconsistent, the latter, although later in date, will not be held to have repealed the former, but the special act will prevail in its application to the subject matter as far as coming within its particular provisions."

Thus, under the ruling as laid down in this case, the laws pertaining directly to these two "Special Road Districts", being in conflict with Sections 8012 and 8013, supra, must prevail.

CONCLUSION

Therefore, it is the opinion of this department that the provisions of Sections 8012 and 8013, R.S. Missouri, 1929, do not make the county highway engineer the custodian of tools and machinery of the "Special Road Districts" organized under the provisions of Articles 9 and 10 of Chapter 42, R.S. Missouri, 1929, nor do these sections give the highway engineer the supervision of all roads or the expenditure of the funds of these "Special Road Districts". These matters are, by the statute above mentioned, placed exclusively in the hands of the board of commissioners of said districts.

Respectfully submitted,

APPROVED BY:

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