

ROADS AND BRIDGES: Bridge constructed by special road district remains property of such district upon abandonment of public road whereon situated.



May 28, 1954

Mr. W. C. Whitlow
Prosecuting Attorney
Callaway County
Fulton, Missouri

Dear Sir:

Reference is made to your request for an official opinion of this department reading as follows:

"A disagreement has arisen regarding 'title' to a bridge on a public road in Callaway County; both the County and the special road district claim the bridge.

"The bridge is located in a special road district and was constructed by the special road district. The section of road upon which the bridge is situated is being abandoned in favor of a new location nearby. The relocation is being paid for by the State Highway Department, since the road is now under their supervision and maintenance. Both the County and the special road district have other locations where the bridge can be used and both now claim 'title' to the bridge.

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"Will you please give me your opinion regarding who owns this bridge?"

For the purpose of this opinion, we have assumed that all of the funds used to "construct" the bridge arose from sources within the district; if this is not in fact true, a possible different conclusion might be reached.

Provision for the incorporation of three distinct types of "special road districts" has been made under Missouri law. The applicable statutes are found in Chapter 233, RSMo 1949. We note that Callaway County is one not under township organization and, therefore, the provisions of Sections 233.320 to 233.445, inclusive, are inapplicable. In your letter of inquiry you have not indicated whether the special road district to which reference is made is a "city or town road district" referred to in Sections 233.010 to 233.165, RSMo 1949, inclusive, or a "special road district--benefit assessment--counties not under township organization" type as governed by Sections 233.170 to 233.315, RSMo 1949, inclusive. However, because of a similarity in statutory authority granted to each of these two types of road districts we do not consider it necessary to determine the exact form of organization.

Your attention is first directed to Section 233.115, RSMo 1949, reading as follows:

"Said board may, by contract or otherwise, under such regulations as the board shall prescribe, build, repair and maintain, or cause to be built, repaired, or maintained all bridges and culverts needed within said district; provided, however, that the county court of the county in which said special road district is located may, in its discretion, out of the funds available to it for that purpose, construct, maintain, or repair, any bridge, or bridges, or culvert or culverts in such road district, or districts, or it may, in its discretion, appropriate out of the funds available for that purpose money to aid and assist the commissioners of said special road district, or districts, which shall be expended by the commissioners of said special road district, or districts, as above provided."

Your attention is also directed to a portion of Section 233.190, RSMo 1949, reading 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." (Emphasis ours.)

From the foregoing it seems that either type of special road district has been specifically empowered to construct bridges within such district. We have examined other statutes relating to such road districts as to the effect of the abandonment of public roads. At no place do we find that any transfer of ownership of the physical improvements, such as bridges and culverts used on a public road, is brought about by statute upon the abandonment of such public road. We therefore conclude that no such change of ownership is so effectuated by such abandonment and that the "title" of the special road district to the bridge mentioned in your letter of inquiry has not been impaired by reason of the abandonment of the public road therein located. This, we believe, is in accord with sound reasoning in that it permits the retention and use of the improvement by the district and within the area from whence came the tax money used for paying for such improvement, provided such is in fact the true circumstances.

CONCLUSION

In the premises we are of the opinion that the "title" to a bridge constructed out of district funds by a special road district upon a public road located within such district is not affected by the abandonment of such public road. It is our further opinion that the board of commissioners of such special

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road district may thereafter dispose of such bridge or may dismantle and re-erect the same at some other place within such special road district where public convenience and necessity may require.

The foregoing conclusion is based upon the assumption that such bridge was paid for out of funds belonging to the special road district.

The above opinion, which I hereby approve, was prepared by my assistant, Will F. Berry, Jr.

Yours very truly,

John M. Dalton
Attorney General

WFB:vlw:vtl