

SPECIAL ROAD DISTRICTS: (1) Possession of records and books to be in the clerk of the board of commissioners; (2) Treasurer of special road district shall furnish a bond.

September 10, 1943

9-11



Mr. William Winkelman
Wayland
Missouri

Dear Mr. Winkelman:

The Attorney-General wishes to acknowledge receipt of your letter of August 24th, in which you request an opinion from this department. Your opinion request, omitting caption and signature, is as follows:

"I wish to ask you a question concerning the rights of members of a Special Road District. The Wayland Special Road District has three commissioners and a Sec. & Treasurer. One commissioner has been refused access to the books and records of this district. Can or can not this commissioner demand that the books and records of this district be in his possession just for the time that he needs to look over them? If he does have this right, what procedure must he use to obtain the books and records.

"Also, is the Treasurer of this Road District compelled to be bonded?"

There was some information desired in order for an opinion to be written on this matter, and therefore this department wrote you on August 27th the following letter:

"Your request for an opinion of this department relative to a special road district located in your county, has been received.

Sept. 10, 1943

"In order for us to arrive at a conclusion in this matter it will be necessary for us to know what type of special road district you have in operation. As you are probably aware, there are several different types and different statutes apply to each one. Therefore, we wish you would write us giving us this information, and also as to what you mean by "books." In other words, we are not able to answer your request as to the access to these books and records unless we know what type books and records they are."

In response to such letter we received a second letter from you, dated September 3, 1943, which letter is as follows:

"Received your letter asking for more data as to how the District was formed as the Wayland Special Road District in 1919 under Article Six, Chapter 102 and amendments thereto of Revised Statutes of 1909. It doesn't exceed 8 square miles and contains an incorporated town of Wayland.

"By 'book,' I mean the book that the Sec-Treas. keeps the income & expenses of the district. By 'records' I mean the contracts, agreements and deeds of which the District is a party.

"Also, I wish to know whether the person, not a member of the board, is required by law to be bonded to be Sec-Treasurer of said district."

In your letter of September 3, 1943, set out above and explaining the meaning of the term "book" as used in your original request for an opinion, you stated that you referred to the book in which the "Sec-Treas. keeps the income & expenses of the district." Also, the statement was made that

the special road district in question was organized under Article 6, Chapter 102, and amendments thereto of the Revised Statutes of 1909. This part of the statutes corresponds to what is now Article 10, Chapter 46, R. S. Mo. 1939.

In an effort to answer your question we wish first to cite you to Section 8678, R. S. Mo. 1939, which provides as follows:

"Such commissioners shall, within ten days from the receipt of such notice, meet and organize by selecting one of their number as chairman and one as clerk. The clerk shall keep full and accurate record of the proceedings of the board, and perform such other duties as may be required of him by the board."

It will be noted from the foregoing statute that the "clerk" of the board of commissioners is to be one of the commissioners. Furthermore, he is to keep a full and accurate record of the proceedings of the board and "perform such other duties as may be required of him by the board." In your letter you refer to "Sec-Treas." We will assume that by "secretary" you refer to the clerk of the board of commissioners. In order to arrive at a solution of the problem we must further indulge in the presumption that the board of commissioners of the Wayland Special Road District has assigned to the aforesaid clerk of the board as one of his "other duties," the duty of keeping the records and books of the road district. Proceeding on these premises we find that the clerk has possession of the books and records of the road district and that it is his duty to both keep and protect such property.

The question then arises whether one of the commissioners has the right and authority to demand that the clerk deliver such books and records into his possession for the purpose of inspection and examination and whether the clerk in answer to such demand must deliver over such property. We should first consider the capacity in which the clerk has the books and records in his possession. Under the statutes cited above he must be one of the commissioners of the road district

but he is not in possession of the books and records for that reason but is in possession of them because he has been appointed the clerk of the board of commissioners. It is true that under the circumstances, such as this, one commissioner has possession of this property, but he holds such property as the clerk. It is, of course, common knowledge that as a general rule, where any clerk is given the duty of keeping books and records of any body, such books and records remain in the possession of the clerk. He is charged with the responsibility of keeping correct records of the proceedings of and before the body of which he is the ministerial officer and it must be admitted that he then should be entitled to the possession of such books and records to insure against alterations of any kind.

We do not mean to hold by this opinion that any one commissioner may not have the right of inspection and examination of such records, since we feel that they are public records, at least so far as the inhabitants of that particular road district are concerned. As these are public records, the commissioners have the authority to inspect and examine them. However, we do feel that the actual possession of such records and books should remain in the clerk of the special road district.

Your other question is whether the treasurer of the Wayland Special Road District shall furnish a bond. With reference to this query we should like to cite you Section 8679, R. S. Me. 1939, which prescribes as follows:

"Said board may appoint a treasurer and fix the amount of his bond and prescribe his duties, which said bond shall be filed in the office of the clerk of the county court."

It will be noted that the above statute provides that the "board may appoint a treasurer" for the road district, and in reading the remainder of the section it might be argued that it is discretionary with the board of commissioners as to whether a bond shall be furnished. However, we feel that if a treasurer is appointed under the provisions of this statute, it is compulsory on his part to furnish a bond to indemnify the inhabitants of the special road district.

Conclusion.

Therefore, it is the opinion of this department that the books and records of a special road district, organized under Article 10 of Chapter 46, R. S. Mo. 1939, shall remain in the actual possession of the clerk of such special road district, who has been appointed by the board of commissioners. It is further our opinion that where a treasurer is appointed under the provisions of the statutes for such special road district, it is his duty to furnish a bond as provided by Section 8679, R. S. Mo. 1939.

Respectfully submitted,

JOHN S. PHILLIPS
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General

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