

ROADS AND BRIDGES: County Court may not appoint road overseer under Section 7870 for special road districts created under Section 8061, R. S. Mo. 1929.

April 13, 1937.

Honorable Carl F. Wymore
Prosecuting Attorney
Cole County
Jefferson City, Missouri



Dear Sir:

This department is in receipt of your letter of February 25, 1937, in which you request an opinion which reads as follows:

"Will you kindly give me your opinion as to whether the County Court may appoint road overseers under Section 7870, Revised Statutes of Missouri, 1929, of Special Road Districts Benefit Assessments in counties not under township organization, organized under Section 8061, Revised Statutes of Missouri, 1929?"

In *School District v. Day*, 43 S.W. (2d) 428, 1. c. 432, the Court in construing the Statutes said:

"It is a companion section to section * * * both being a part of the same act* * *, and they should be construed together.

Chapter 42, Article X, R.S. Mo. 1929, provides the manner in which special road districts, in those counties not under township organization, are formed and maintained. Section 8061 authorizes their formation, and Section 8063, a companion section to 8061 provides as follows:

"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 within the district, who shall hold their office until the first Tuesday after the first Monday in January thereafter; and on said date the

voters of the district, at an hour and place to be filed by said 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 each year thereafter they shall elect a commissioner to take the place of the one whose term is about to expire, who shall serve three years. No person shall be elected or appointed commissioner who is not a resident of the district and an owner of land in the district. Any vacancy caused by resignation, death, removal from the district of a commissioner or sale of all land owned by him in the district shall be filled for the unexpired term by election by the voters of the district. All commissioners shall qualify by taking, subscribing and filing with the county clerk the oath prescribed by the Constitution of this state, and that they will faithfully, honestly and impartially discharge their duties as commissioners according to law. If for any reason the board of commissioners hereinbefore mentioned shall fail to call an annual or other prescribed election to fill a vacancy or vacancies caused by the expiration of the term of any one or more of the commissioners, then the county court is hereby authorized and required to call an election to fill said vacancy and to fix the time therefor within fifteen days after making the order for such election."

Setting forth the manner in detail for the selection of commissioners of the district formed under Section 8061. Under the ruling in the School District v. Day case, supra,

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these are companion sections, both being a part of Chapter 42, Article X, R.S. Mo. 1929, and should be construed together.

Part of Section 8065 of Chapter 42, Article X, R. S. Mo. 1929, is as follows:

"* * * *Said commissioners shall have all the power, rights and authority conferred by law upon road overseers, * * * *."

thus replacing the office of road overseer with the commissioners selected under Section 8063, R. S. Mo. 1929.

Therefore, Section 7870, R. S. Mo. 1929, can not be invoked to give the county court power to appoint road overseers for special road districts created under Section 8061 R. S. Mo. 1929. Section 7870 is under Chapter 42, Article III, relating to public roads and their maintenance, and can hardly be construed a companion section to Section 8061, because these sections relate entirely to different subjects. The means by which commissioners (overseers), for those road districts created under Section 8061, R. S. Mo. 1929, are to be selected, is provided in Section 8063 R. S. Mo. 1929, and must be followed in their selection.

Respectfully submitted

OLLIVER W. NOLEN
Assistant Attorney General.

APPROVED:

J. E. TAYLOR
(Acting) Attorney General.

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