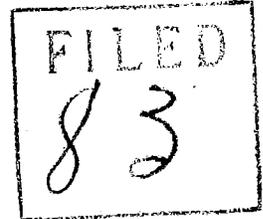


SPECIAL ROAD DISTRICTS: Special road districts should severally vote road bonds to provide funds for participation in "milk route" road bill appropriation.



February 26, 1947

Honorable Wayne V. Slankard  
Prosecuting Attorney  
Newton County  
Neosho, Missouri

3/8

Dear Sir:

Reference is made to your inquiry, requesting an official opinion of this office, and reading as follows:

"I would like your opinion on the following:

"In counties having special road districts may the county court call an election for voting bonds for funds to be used to match those set up under C. S. H. B. No. 214, Secs. 8619.1-8619.7, Mo. R. S. A., or must each individual road district vote these bonds and participate in the state fund individually?"

You have not specified the type or types of special road districts which exist in Newton County. We note that your county is not one under township organization; therefore, it is possible that you have within your county special road districts organized under the provisions of both Article 10 and Article 11 of Chapter 46, R. S. Mo. 1939. It, therefore, becomes pertinent, at the outset, to determine whether such special road districts have authority, under existent statutes, to issue road bonds for the purpose of providing funds to be used to match the appropriation to be made to effectuate the purposes of Committee Substitute for House Bill No. 214, commonly known as the "milk route" road bill, passed by the 63rd General Assembly.

Section 8609, R. S. Mo. 1939, as reenacted in House Bill No. 906 of the 63rd General Assembly, reads as follows:

"The board of commissioners of any special road district organized and incorporated under the provisions of Article 10, Chapter 46, for and on behalf of such district, and the county courts of the several counties under township organization on behalf of any township in their respective counties, are hereby authorized to issue road bonds to an amount, including existing indebtedness, not exceeding five per centum of the value of the taxable tangible property of such special road district or township, as the case may be, as shown by the last completed assessment for state and county purposes. Such bonds shall be issued in denominations of one hundred dollars, or some multiple thereof, to bear interest at not exceeding six per centum per annum, payable semi-annually, and to become due and payable at such times as the board of commissioners or county courts shall determine by order of record, not exceeding twenty years from date of issue."

Succeeding statutes provide the machinery for conducting an election to test the sense of the inhabitants of such special road districts upon the question of whether or not such bonds shall be issued.

With respect to special road districts incorporated under the provisions of Article 11 of Chapter 46, R. S. Mo. 1939, similar authority is granted to the commissioners of such special road districts under the provisions of Section 8717, R. S. Mo. 1939. This section is not set out verbatim herein as it is quite lengthy. It will suffice to say that the authority contained therein is quite similar to that granted under Section 8609, quoted supra, and that further provisions of the same section also provide the machinery for conducting the election to test the sense of the inhabitants of such special road districts upon the question of issuing the bonds.

From the foregoing, it is readily apparent that authority does exist in special road districts of both types to issue bonds to provide funds for the necessary road and bridge purposes.

The complete control of all public highways located within special road districts incorporated under either Article 10 or Article 11 of Chapter 46, R. S. Mo. 1939, has been granted to the commissioners thereof under pertinent statutory enactments.

Section 8682, R. S. Mo. 1939, relating to special road districts incorporated under the provisions of Article 10 of Chapter 46, R. S. Mo. 1939, reads, in part, as follows:

"Said board shall have sole, exclusive and entire control and jurisdiction over all public highways within its district outside the corporate limits of any city or village therein to construct, improve and repair such highways, \* \* \*."

Similar authority is found in Section 8714, R. S. Mo. 1939, relating to special road districts incorporated under Article 11 of Chapter 46, R. S. Mo. 1939, which reads, in part, as follows:

" \* \* \* 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, \* \* \*."

Viewing these statutory enactments in their relationship to each other, it is quite clear that special road districts of the types referred to herein have complete control over the public highways located within their boundaries, and that, in addition to the ordinary tax levies which they are permitted to make, provision has been made for the issuance of road bonds, upon a vote of the inhabitants of such special road districts, to carry out their corporate functions. A complete scheme has thereby been provided for the construction, maintenance and repair of all public highways within the boundaries of such special road districts.

We now come to a consideration of Committee Substitute for House Bill No. 214 of the 63rd General Assembly, found as Sections 8619.1 to 8619.7, Mo. R. S. A. A brief resume of the essential provisions of this Act is deemed helpful to a complete understanding of the question which you have presented.

Section 8619.1 creates the County Aid Road Fund to receive appropriations made by the General Assembly for the purpose of aiding and assisting the improvement, construction, reconstruction and restoration of county roads.

Section 8619.2 authorizes the Missouri State Highway Commission to assist and cooperate with the various county courts in

the improvement, construction, reconstruction and restoration of county roads.

Section 8619.3 prescribes the types and kinds of county roads for which the fund may be used by the county court. It contains the following, which we deem pertinent to the question at hand:

" \* \* \* The county courts in counties having special road districts or counties under township organization, when authorized by any such special road district or county township organization, may represent and cooperate with, enter into contracts with, or for, and receive funds, plans and proposals from or for such special road districts and townships, for the purpose of carrying out the provisions of this act. \* \* \*" (Emphasis ours.)

Section 8619.4 provides for the formulation of a program by the county court, with the advice and assistance of the county highway engineer, or the county surveyor, as the case may be, for the use of such money as may be set aside to such county.

Section 8619.5 provides the method for advertising for bids and the awarding of contracts for county road work to be done. It also includes the following, which we deem pertinent:

" \* \* \* In the event that no bids are received, or in the event that such bids are in excess of the estimate of cost thereof as prepared by the county highway engineer, the county court, the special road district, or the township board in those counties having township organization, may perform the work provided for in the specifications, provided, however, that the amount to be paid from the County Aid Road Fund shall in no event exceed fifty per cent of the estimate of cost prepared by the county highway engineer, or the sum of \$750.00 per mile, whichever sum is less." (Emphasis ours.)

Section 8619.6 provides for the payment for work done on the county roads.

Section 8619.7 provides for the matching of the funds in the County Aid Road Fund by the Federal Government, and the formulation of rules and regulations necessary to comply with any Federal aid law and requisite for participation in such Federal aid program.

From the verbatim quotations set out supra, taken from Sections 3 and 5 of the Act, it seems that the continued jurisdiction and control by the boards of commissioners of special road districts over the public highways found within their territorial boundaries has been recognized. Such being true, the commissioners must necessarily continue to perform their statutory duties with respect to such roads as they have in the past. Should they see fit to engage in a program of improvement under the provisions of the "milk route" bill, they may appoint the county courts of their respective counties as their agents for the purpose of carrying out the provisions of the Act.

We think that these provisions, coupled with the continued authority to issue bonds, as has been discussed hereinbefore, clearly reflect the intention of the Legislature that the various special road districts are to be recognized as separate units.

Therefore, in the premises, each of such special road districts should act for itself in providing the funds necessary to match those available through state aid for the various road purposes enumerated in the Act.

#### CONCLUSION

In the premises, it is our opinion that each special road district should provide its own funds, either from current revenues, the issuance of bonds or other sources, to be used for matching the money available through appropriations made by the General Assembly as a county aid road program.

Respectfully submitted,

WILL F. BERRY, Jr.  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General

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