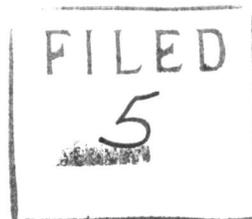


SPECIAL ROAD
DISTRICTS:
BONDS:

Special road district organized under provisions of Art. 18, Chap. 46, R. S. Mo. 1939, which issues bonds, may dissolve before such bonds are paid, and certification of amount necessary to pay such bonds is to be made by trustee, or, if he fails, by state auditor, and levy is made by county court.

March 29, 1948



Honorable Emmett L. Bartram
Prosecuting Attorney
Nodaway County
Maryville, Missouri

Dear Sir:

This is in reply to your letter of recent date, requesting an official opinion of this department and reading as follows:

"I would like your opinion as to the rights and duties of a Special Road District organized under the provisions of Article 18, Chapter 46, R. S. of Missouri, 1939.

"Lincoln Special Road District proposes to issue its General Obligation Bonds as provided by Section 8843. After such bonds have been voted the district would like to dissolve in accordance with Section 8855 and following sections in order to receive aid from the county in the maintenance of its roads and bridges.

"May the Special Road District, having voted bonds, elect to dissolve the special road district, and, if so, how will the monies be raised for the payment of the outstanding bonds?

"Will you please give your opinion upon the matter."

Section 8855, R. S. Mo. 1939, provides as follows:

"Whenever a petition, signed by the owners of a majority of the acres of land owned by residents of the county residing within the district organized under the provisions of this article, shall be filed with the county court of any county in which said district is sit-

uated, setting forth the name of the district and the number of acres owned by each signer of such petition and the whole number of acres in said district, the said county court shall have power, if in its opinion the public good will be thereby advanced, to disincorporate such road district. No such road district shall be disincorporated until notice is published in some newspaper published in the county where the same is situated for four weeks successively prior to the hearing of said petition."

Section 8856, R. S. Mo. 1939, provides that no such dissolution shall invalidate or affect any right accruing to such road district or to any person, or invalidate or affect any contract entered into or imposed on such road district.

Section 8857, R. S. Mo. 1939, provides for the appointment of a trustee upon dissolution of any such road district.

Section 8858, R. S. Mo. 1939, provides for the powers of the trustee, and provides, in part, that he shall have power, "under the order and direction of the county court, to exercise all the powers given by law to said road district."

Section 8859, R. S. Mo. 1939, provides that when the trustee shall have closed the affairs and paid all debts of the district, he shall pay over to the treasurer of the county all money remaining in his hand, taking a receipt therefor, and deliver to the clerk of the county court all books, papers, records and deeds belonging to the dissolved road district.

There is no prohibition in any of the above statutes against the dissolution of a special road district in a county under township organization when bonds voted by such district are outstanding and unpaid.

In the case of State ex rel. Henry v. State Auditor, 118 S. W. (2d) 19, it is apparent that that particular road district was dissolved when bonds were outstanding and would continue to be for several years. The Supreme Court had no criticism of such dissolution.

Section 8843, R. S. Mo. 1939, provides for the issuance of bonds by a special road district organized under the provisions of Article 18, Chapter 46, R. S. Mo. 1939.

This department has previously held in an opinion to Forrest Smith, under date of July 31, 1947, that Section 8843 was the exclusive authority for the issuance of bonds by a special road district organized under Article 18, Chapter 46, R. S. Mo. 1939, and that Section 8613, R. S. Mo. 1939, did not prohibit the issuance of bonds by a special road district when the bonds of a special road district and a township in which the special road district was located were voted on the same day and the proceedings for the election by the township were prior to the proceedings by the special road district. This opinion, however, did not hold that the method of levying taxes to pay the principal and interest of these bonds was contained in Article 18, Chapter 46, since at the time that opinion was written Section 8842, R. S. Mo. 1939, had been repealed.

Section 8842, R. S. Mo. 1939, provides that the board of commissioners of such a special road district had power to levy general taxes, and also had power and authority and the duty of levying special taxes for the purpose of paying the interest on bonds when it fell due and to create a sinking fund sufficient to pay the principal of the bonds at maturity; and provided that whenever the commissioners filed with the clerk of the county court a written statement that they levied such tax, the county clerk, in making out the tax books, should charge all property taxable in the district with the tax. Such section further provided that whenever the board of commissioners failed to comply with the section in making provision for the payment of principal and interest on the bonds, the state auditor, on or before the first day of May, should discharge the duties of the board of commissioners with regard to the levying of the taxes for the purpose of paying the interest and principal of the bonds.

This section presumably was repealed because the Supreme Court of Missouri, in the case of State ex rel. v. Southwestern Bell, 179 S. W. (2d) 77, held Section 8716, R. S. Mo. 1939, which was a similar section with regard to benefit assessment road districts in non-township counties, to be unconstitutional in so far as it provided for an unlimited levy of taxes by the commissioners.

Since Section 8842 has been repealed, we must look to the general law to find the method of following the injunction of that part of Section 8843, R. S. Mo. 1939, providing:

" * * * provide for the levy and collection of a direct annual tax upon all the taxable property in the district sufficient to provide for the payment of the principal and interest of the bonds so authorized as they re-

spectively become due. * * * * *

and of Section 26(f) of Article VI of the Constitution, providing as follows:

"Before incurring any indebtedness every county, city, incorporated town or village, school district, or other political corporation or subdivision of the state shall provide for the collection of an annual tax on all taxable tangible property therein sufficient to pay the interest and principal of the indebtedness as they fall due, and to retire the same within twenty years from the date contracted."

The general law providing the method is found in Section 8610, R. S. Mo. 1939, which provides, in part, as follows:

" * * * It shall be the duty of the clerk of the board of commissioners on or before the first day of May in each year, or the state auditor immediately thereafter, in case the clerk of the board of commissioners should fail or neglect, on or before the first day of May of each year, so to do, to certify to the county court of the county, or counties, wherein such road district is situated, the amount of money that will be required during the next succeeding year to pay interest falling due on bonds issued and the principal of bonds maturing during such year. On receipt of such certificate it shall be the duty of the county court, or courts, at the time it makes the levy for state, county, school and other taxes, to, by order made, levy such a rate of taxation upon the taxable property in the road district, in such county or counties, as will raise the sum of money required for the purposes aforesaid. On such order being made it shall be the duty of the clerk of the county court, or courts, to extend such rate of taxation upon the tax books, against all of the taxable property in the district in such county or counties, and the same shall be collected by the collector of the revenue at the time and in the manner, and by the same means as state, county, school and other taxes are collected. * * * * *"

It is our view that under the provisions of Sections 8610 and 8858, supra, the trustee, exercising the powers given by law to road districts, is to certify to the county court the amount of money necessary to pay the interest and bonds maturing, and that if the trustee does not so certify, it is the duty of the state auditor to certify to the county court such amount.

In the case of State ex rel. v. State Auditor, supra, the Supreme Court held that under the provisions of Section 8842, supra, which was then in effect, where the trustee of a special road district organized under the provisions of Article 18, Chapter 46, and which district had been dissolved four years previously, levied, under direction of the county court, a tax rate which was insufficient to pay the current maturities with interest, that the state auditor could be compelled by mandamus to levy a sufficient tax rate to pay such current maturities with interest. Since Section 8842 has been repealed, Sections 8610 and 8858, supra, now provide the method for making such levy, and provide that the levy is to be made by the county court upon certification by the trustee, or if certification is not made by the trustee, upon certification of the state auditor.

While there is no statement of facts in your opinion request that would necessarily bring the special road district within the purview of Section 8613, R. S. Mo. 1939, we believe that the restrictions contained within Section 8613 apply only to the voting of bonds and not to the method of paying such bonds, since the payment of the bonds is enjoined by Section 26(f) of Article VI of the Constitution of Missouri.

CONCLUSION

It is the opinion of this department that a special road district which has voted bonds may dissolve, and that after dissolution the moneys for the payment of the outstanding bonds and the interest thereon are to be raised by a tax levy made by the county court upon certification by the trustee of the dissolved road district, and that if no certification is made by the trustee, such certification is to be made by the state auditor.

Respectfully submitted,

APPROVED:

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