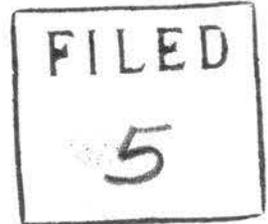


ROADS AND BRIDGES: Special road district cannot be organized under
SPECIAL ROAD Art. 18, Chap. 46, R.S. Mo. 1939, when all of ter-
DISTRICTS: ritory in road district constitutes all or a part
or a city of the forth class. Funds of the road
district arising from special road and bridge tax
cannot be spent in incorporated towns or cities.

June 25, 1948

FILED 5



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

Dear Sir:

This is in answer to your letter of recent date request-
ing an official opinion of this department and reading as
follows:

"It is the desire of a majority of the land-
owners of the town of Burlington Junction,
Missouri, so I am advised, to organize a
Special Road District under the provisions
of Article 18, Chapter 46, R.S. of Missouri,
1939. This being a county which has adopted
township organization.

"I would like your opinion as to whether
such a Special Road District may be organized
with all or substantially all of the lands
within the boundaries of such district con-
stituting a city of the fourth class.

"You will have in mind that Section 8840 gives
the commissioners exclusive and entire control
over the public highways, bridges and culverts
within the district. You have previously ruled
that in such case the jurisdiction of the
county in such district ceases when the dis-
trict is formed.

"You will understand that this matter gets to
be of considerable importance as a township
Road and Bridge tax is levied in each city and
in most cases, I am advised, no part of such
monies are expended within the cities.

"Will you please give me your opinion as to the power to incorporate such district."

Section 8836, R. S. Mo. 1939, provides for the organization of special road districts in counties operating under township organization. Said section provides, in part, as follows:

" * * * Districts so organized may be of any dimensions that may be deemed necessary or advisable, except that every district shall be included wholly within the county organizing it and shall contain at least six hundred and forty acres of contiguous territory: Provided, that the county court shall not have power to divide the territory within the corporate limits of a city having a population of one hundred fifty thousand into such road district."

In the case of State ex inf. v. Walker, 301 Mo. 115, a special road district was organized under what is now Section 8710, R. S. Mo. 1939, which is a section similar to Section 8836, supra, except that Section 8710 applies to counties not under township organization. The road district in that case included part of the city of Butler and all of the city of Rich Hill. The Supreme Court in that case held that the special road district was properly formed. Therefore, we are of the opinion that an incorporated town or city, or a part thereof, may be included in a special road district organized under the provisions of Article 18, Chapter 46, R. S. Mo. 1939, except that the territory within the corporate limits of a city having a population of 150,000 may not be divided into such special road district.

Section 8840, R. S. Mo. 1939, provides as follows:

"The township board of trustees shall, upon the organization of such commissioners, cause all tools and machinery used for working roads belonging to the districts and parts of districts formerly existing and composed of territory embraced within the incorporated district to be delivered to said commissioners, for which such commissioners shall give receipt, and such commissioners shall keep and use such tools and machinery for constructing and improving public roads and bridges. The township boards shall also cause the township treasurer to pay over to the treasurer of the

special road district all moneys in his hands belonging to the district or districts that have been merged into the special road district whenever the board of commissioners of such special road district shall make demand therefor. 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."

Section 7197, R. S. Mo. 1939, provides, in part, as follows:

" * * * Cities of the fourth class shall have and exercise exclusive control over all streets, alleys, avenues and public highways within the limits of such city."

Since Section 7197 provides that cities of the fourth class shall exercise exclusive control over all streets, alleys, avenues and public highways within the limits of such city, and Section 8840 provides for the turning over to the board of commissioners of a special road district formed under Article 18, Chapter 46, of all the tools and machinery used for working roads belonging to the districts composed of territory embraced within the incorporated district, and provides that the township boards shall cause the township treasurer to pay over to the special road district all moneys belonging to the district or districts that have been merged in the special road district, and that the commissioners shall have the power, rights and authority conferred

by law upon road overseers, it is our opinion that a special road district organized under Article 18, Chapter 46, has the sole, exclusive and entire control and jurisdiction over the public highways, bridges and culverts within such special road district outside of the limits of incorporated cities or towns, that is, the public highways, bridges and culverts within the common road district or districts which have been formed into the special road district.

Sections 8562 and 8588, R. S. Mo. 1939, we believe, sustain the correctness of this view, in that such sections demonstrate that the Legislature intended that the streets in incorporated cities and towns should be under the exclusive control of such cities and towns. Section 8562 provides that all streets and alleys in unincorporated towns and villages shall be under the control of the county court, and Section 8588 provides for the attaching to a road district of an incorporated city or village when the city or village fails to elect officers or maintain a municipal government.

Section 8820, Laws of Missouri, 1947, page 483, provides, in part, as follows:

" * * * Provided, further, that the proceeds of such fund maybe used in the discretion of the township board of directors in the construction and maintenance of roads and in improving and repairing any street in any incorporated city, town or village in the township, if said street shall form a part of a continuous highway of the township running through said city, town or village."

The above-quoted provision in Section 8820 is the only authorization for the expenditure in counties under township organization of moneys raised by the special road and bridge tax in incorporated cities, towns and villages. Since there is no provision for the expenditure of moneys raised by the road and bridge tax by the commissioners of a special road district organized under Article 18, Chapter 46, in incorporated cities, towns or villages, we are of the opinion that no authority for such expenditure exists.

Since a special road district organized under Article 18, Chapter 46, has no authority to spend any of its funds within an incorporated city, town or village, a special road district cannot be organized which will consist exclusively of territory within a city of the fourth class or a part thereof.

CONCLUSION

It is the opinion of this department that a special road district cannot be organized in a county under township organization when all of the territory in such special road district is within a city of the fourth class.

It is further the opinion of this department that if a special road district is organized in a county under township organization and a city of the fourth class, or a part thereof, is within such special road district, the funds arising from taxation on property within such special road district, which are turned over to the commissioners of such special road district, may be spent by such commissioners only on the public highways, bridges and culverts in such special road district which are outside of the limits of such incorporated city.

Respectfully submitted,

C. B. BURNS, Jr.
Assistant Attorney General

APPROVED:

J.E. TAYLOR
Attorney General

CBB:HR