

ROADS AND BRIDGES: Commissioners of Special Road Districts can not act as road overseers or employ themselves and receive compensation for the same in the Special Road District.

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May 3, 1937

Filed: #45

Mr. C. E. Jeffries  
Clerk of the County Court  
Newton County  
Neosho, Missouri



Dear Sir:

This Department is in receipt of your letter of April 21, 1937, wherein you make the following inquiry:

"A road question has arisen in a Special Road District in this County on which we would like very much to have your opinion.

"Is it legal for any one who has been appointed road commissioner to receive a salary as a maintenance operator?"

On June 18, 1935, this Department rendered an opinion to Honorable G. Logan Marr, Prosecuting Attorney of Morgan County, in which this question is discussed and a conclusion reached to the effect that it is illegal for road commissioners to receive a salary for labor in the district, or, as stated in your letter, as maintenance operators.

Since the rendition of the inclosed opinion we have concluded that commissioners employing themselves is illegal for the further reason that it violates or is contrary to public policy. All of the authorities to this effect are discussed in State ex rel. v. Bowman, 184 Mo. App. 1. c. 559:

"We are not without abundant authority for this ruling. The case of Meglemery v. Weisinger, (Ky.) 131 S.W. 40, 31 L.R. A. (N.S.) 575, is a leading case on this subject. The editorial note to that case says: 'The adjudged cases upon the validity of appointment to office made from the membership of the appointing body hold uniformly that such appointments are illegal and to be generally discountenanced. 'In that case it was held that the fiscal court of a county, empowered to appoint a bridge commissioner, a salaried officer, could not appoint one of their own number. No specific statute or constitutional provision is cited as prohibiting such action. The court held the appointment void as against public policy, and said: 'Nor does the fact that his term expired within a few days after his appointment, or the fact that his duties would be prescribed and his compensation allowed by a body of which he was not a member, or the fact that he was not present with the court when his appointment was made, have the effect of changing this salutary rule. The fact that the power to fix and regulate the duties and compensation of the appointee is lodged in the body of which he is a member is one, but not the only, reason why it

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is against public policy to permit such a body charged with the performance of public duties to appoint one of its members to an office or place of trust and responsibility. It is of the highest importance that municipal and other bodies of public servants should be free from every kind of personal influence in making appointments that carry with them services to which the public are entitled and compensation that the public must pay. And this freedom cannot in its full and fair sense be secured when the appointee is a member of the body and has the close opportunity his association and relations afford to place the other members under obligations that they may feel obliged to repay.' Other cases to the same effect will be found, giving the same and other reasons for so holding. (Smith v. City of Albany, 61 N. Y. 444; Gaw et al. v. Ashley et al., (Mass.) 80 N.E. 790; The People v. Thomas, 33 Barbour's Repts. 287; Ohio ex rel. v. Taylor, 12 Ohio St. 130; Kinyon v. Duchene, 21 Mich. 497.)."

Therefore, in addition to the reasons assigned in the opinion to Mr. Marr, we are of the opinion that Road Commissioners employing themselves constitutes a direct violation of the public policy of the State, and, accordingly, so hold.

Respectfully submitted,

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APPROVED:

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(Acting) Attorney General