

TOWNSHIP ORGANIZATION:)
ROADS, HIGHWAYS & BRIDGES:) Commissioners of Special
Road Districts - how selected
under Section 8063, R. S. Mo. 1929

January 8, 1940

Honorable Emory C. Medlin
Prosecuting Attorney
Barry County
Cassville, Missouri



Dear Sir:

This Department is in receipt of your letter of January 4th in which you request an opinion. Your letter reads as follows:

"The County Court has requested me to get an opinion from you in regard to Section 8063, Special Road Commission, in regard to electing Commissioners for a Special Road District.

"What they want to know is who has the authority to appoint the men who count the votes, whether they should appoint the judges or whether the Commissioners have that authority."

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

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

Your question goes to Section 8063, R. S. Mo. 1929, which section is as follows, to-wit:

"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."

It will be observed from a study of the legislative history of this section that there was a similar section in the statutes, as will be found in the Laws of Missouri, 1913, at page 679. And upon further examination it will be found that in the year 1919, as is shown by Laws of Missouri, 1919, at page 732, the Legislature re-enacted the section, which follows nearly verbatim the section as set forth in Laws of Missouri, 1913, and said section makes this change after the words, "be filled for the unexpired term," viz., "by appointment by the remaining commissioners of the district."

On further study, it will be found that Section 10835, Revised Statutes of 1919, as well as Section 863 of the Revised Statutes of 1929, attempt to follow the Laws of 1913. Whereas, the law as it stands today, in the opinion of this Department, is Section 4, Laws of Missouri, 1919, at page 732, and for the purposes of this opinion said section is used and is set out as follows, to show the difference between it and Section 8063, as it appears in the Revised Statutes of Missouri, 1929, heretofore set out in this opinion:

"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 fixed 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 and 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 appointment by the remaining commissioners 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 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 fix the time therefor within fifteen days after making the order for such election."

From observation of the statute it will be found that Section 8061, R. S. Mo. 1929, specifies that county courts may form road districts in certain instances, and Section 8063, supra (which in our opinion should read as Section 4, Laws of Mo. 1919, set out above), tells how the commissioners may be selected. And it will be observed that, as the statute reads, "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," these commissioners are, in the inception of the organization, first appointed by the county court.

And the statute further states, "and on said date the voters of the district, at an hour and place to be fixed 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 * * * * *". In other words, the acting commissioners are to call these elections, and indicate the time and place of their holding, and it is clearly implied that the manner of taking, as well as of ascertaining and recording the result of the vote, is left to that body. See, State ex inf. v. Heffernan, 243 Mo. 442, l. c. 452. In the inception of the organization of the district, the voters would select three persons, one for one year, one for two years, and one for three years, and at each annual election thereafter they would select one for a period of three years.

And following further, the statute reads, "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." By the word "they," it is the opinion of this office that the Legislature had reference to "voters."

And further, the statute says, "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 appointment by the remaining commissioners of the district." This, we think, is clear, and means that the office of said commissioner shall be filled by the remaining commissioners 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, * * *."

It will be found that if the commissioners do not carry out the duties imposed upon them, that is, calling the annual election or a special election, as the circumstances require, prescribing the time, etc., as explained

in the foregoing part of Section 8063, the statute provides thus:

"If for any reason the board of commissioners hereinbefore mentioned shall fail to call an annual 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."

It is the opinion of this Department that, under this last paragraph of the statute, should the duly elected and qualified and acting commissioners fail to call an annual election, or should fail to appoint a commissioner within a reasonable time, when some member has become disqualified as set forth in the section, then the county court shall have the authority to call said election, and should they exercise this statutory duty, they (the county court) would call these elections, indicate the time and place of their holding, and the implication is clear that the manner of taking, as well as of ascertaining and recording the result of the vote, would be left to that body. See, *State ex inf. v. Heffernan, supra.*

Conclusion

We are, therefore, of the opinion that where the election is conducted by the commissioners, they are to call the election, indicate the time and place of its holding, and are to prescribe the manner of taking, as well as ascertaining and recording the result of the vote; and if the occasion arose where the county court conducted the election, then it would have the same rights and duties to perform. *State ex inf. v. Heffernan, supra.*

Respectfully submitted,

APPROVED:

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Assistant Attorney-General

W. J. BURKE
(Acting) Attorney-General