

SPECIAL ROAD
DISTRICT: -

Article 10, Chapter 46, makes no provision for the appointment of a trustee where such district is disorganized under Section 8706 R. S. Missouri, 1939. Therefore, must resort to circuit court for the appointment of trustee.

May 1, 1941

Hon. James A. Finch, Jr.
Assistant Prosecuting Attorney
Cape Girardeau County
Cape Girardeau, Missouri



Dear Sir:

We are in receipt of your request for an opinion, dated April 21, 1941, which reads as follows:

"I hereby request your opinion upon the matters hereinafter set out.

"A Special Road District, organized under Article 10, Chapter 46, R. S. Mo. 1939, was recently dissolved by vote in accordance with Section 8706, R. S. Mo., 1939, and the following questions have arisen by the County Court of this County as a result of such dissolution. In the first place the said Article contains no provision with respect to the liquidation of the affairs of the District following such dissolution. We call your attention to the fact that Article 11 of Chapter 46, dealing with other types of Special Road Districts, contains a Section, namely Section 8733, providing for the appointment of a trustee for the Road District to liquidate its affairs, but Article 10 contains no such provision. Hence, the first question arising is as to how and by whom the affairs of the District shall be liquidated.

"Secondly, the District had rented certain machinery for the latter part of the year 1940, and under its contract was to issue a warrant dated December 31, 1940 for such rent. The warrant was never issued and the questions arising are, who shall issue the warrant, and whether said warrant is payable solely out of the tax receipts for the year 1940, which might be on hand or subsequently collected. In that connection the District had also issued its warrant on September 19, 1940 for repairs on machinery, and such warrant recited that it should be paid out of tax receipts for 1941. It would appear that under Section 8702 the District could not issue its warrant in anticipation of the income for the subsequent year. Would like for you to advise whether in your opinion that is correct, and whether such warrant would be payable out of the revenue for the year 1940, and whether any delinquent taxes collected for preceding years shall be applied to pay such obligation.

"I should like to also have your opinion on the question of whether any property, such as machinery and equipment, belonging to the District shall be used for the purpose of paying any outstanding warrants of the District, or what disposition should be made of such equipment.

"It is my understanding that Cape Girardeau County does not in anywise become liable for any outstanding obligations of the Special Road District. Would be glad if you would let me likewise have your opinion upon this question."

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In reply to your first question: " * how and by whom the affairs of the District shall be liquidated." We wish to say that we have examined Article 10, Chapter 46, R. S. Missouri, 1939. We find under said Article that the legislature does not provide for the appointment of a trustee to liquidate the affairs of a district organized under this Article, as they have done under Article 11 and others. The only section which might be construed to have been meant to bring into the Article other sections of the statute is the last paragraph in Section 8706 R. S. Missouri, 1939, which reads in part as follows:

" * * * In all other respect said election, and the result thereof, shall be governed by the provisions of Article 10, Chapter 46, Revised Statutes of Missouri, 1939. (R. S. 1929, sec. 8057. Re-enacted, Laws 1935, p. 343.)"

However, as stated in the case of State v. Richman, 148 S. W. (2d) 796, the court said that they could not write into the law any provision, or make any interpretation that could not be drawn from a specific statute or statutes. This was a criminal case, but it correctly states the law in both criminal and civil cases. Therefore, the district about which you write, having been organized under Article 10, and in the enactment of the statutes contained in Article 10 the legislature, either through oversight or being of the thought that an occasion would not arise where a liquidation would be required, has failed to incorporate in Article 10 any Sections as will be found in Article 11, namely Sections 8733 and 8734 (R. S. Missouri, 1939), which Sections provide for the appointment of a trustee and set forth his duties. However, we are faced with the general proposition of law that no corporation can go into liquidation, either voluntary or involuntary, if there are assets on hand with which to pay them, in whole or in part, without liquidation procedure.

In the case of Graves v. Little Tarkio Drainage District Number 1, 134 S. W. (2d) 70, it was ruled that the drainage district law is a code unto itself and in proceedings involving drainage districts, courts must follow pro-

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visions of statutes governing such districts. (Article 10 contains laws of the same nature, in that it is a code within itself.) All terms and provisions under the ruling of this case should be construed broadly and liberally.

In the instant case we do not see how it would be possible to have precluded the resident taxpayers from exercising their rights under Section 8706, but we think it logical that it must also be recognized that all creditors of the district must be paid in the dissolution subject, however, to other legal contingencies which will be taken up under question number two.

Therefore, in the enforcement of the liquidation and the carrying out of the same we think that the proper procedure would be for a petition to be filed in the circuit court of the county in which the district was organized, setting up the fact of incorporation and dissolution, and that there was no specific statute providing for the appointment of a trustee, and we cannot construe the several sections to be broad enough to include by inference the sections, supra, contained in Article 11. Therefore, we think the circuit court would have general power and jurisdiction and the circuit judge would be the proper judge and it would be fully within his rights to appoint a suitable person, or persons, to carry out the liquidation of the district about which you inquire.

In answer to your question number two, we are herewith enclosing an opinion which was written by this department on the 20th day of January, 1941, and rendered to Hon. Robert W. Smart, Prosecuting Attorney, Lawrence County, Mt. Vernon, Missouri, which covers the law as to expenditures made within and without the current and anticipated revenues to which you refer in your request.

CONCLUSION.

In conclusion, in answer to your question number one, it is our opinion that where the necessity requires a liquidation of assets of districts organized under Article 10

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of Chapter 46, Revised Statutes of Missouri, 1939, a trustee must be appointed by the circuit court of the county in which the district was organized there being no specific provision made by the legislature by statute for such appointment.

As stated above, your second question is answered by the enclosed opinion.

Respectfully submitted,

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APPROVED:

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