

SPECIAL ROAD DISTRICTS: Warrants to be paid in future years for
for payment of machinery where total costs
is in excess of the unspent year's income and that which can be
anticipated for the year that said machinery is bought are void
and non-enforcible within the meaning of Section 12, Article 10
of the Constitution of Missouri, and therefore, said warrants
would have no effect upon a reorganization of the said road districts.

January 20, 1941

Honorable Robert W. Smart
Prosecuting Attorney
Lawrence County
Mount Vernon, Missouri



Dear Mr. Smart:

We are in receipt of your request of January 7, 1941, for
an opinion on the following statement of facts:

"On August 29, 1940, at the request
of the County Court of Lawrence County,
Mr. Creech of your office submitted an
opinion regarding the dissolution of an
eight mile special road district created
under Article 9, Chapter 42, R.S. Mo.,
1929. In keeping with that opinion the
district was properly dissolved however
the district incurred an indebtedness of
approximately \$3500.00 for necessary road
machinery, which amount was more than three
times greater than the anticipated annual
revenue of the district. The purchase
contract for the machinery was based on a
deferred payment plan with annual payments
in an amount less than the anticipated
revenue for any fiscal year. There was no
bonded indebtedness in this district and
as a consequence it was not necessary to
invoke the provisions for liquidation for
bonded indebtedness. Since the road dis-
trict had been dissolved, they continued to
operate as a common road district under the

supervision of the County Court and an overseer appointed by the Court. The indebtedness which I have previously mentioned is still outstanding however a petition has been presented by sufficient property owners of the district to call an election for the creation of a benefit assignment district. In my search of the law I fail to find a statutory provision for the liquidation of indebtedness, other than bonded indebtedness following the dissolution of an eight mile district. I note that in the dissolution of other types of road districts that provision is made for the liquidation of assets and debts by a trustee and I deduce that the dissolution is not complete until the trustee has made his final settlement with the Court (8085-8086 Article 10, Chapter 42). The Court draws the inference that in as much as the law has contemplated and provided for the liquidation of such matters in other types of districts that it must have contemplated some such action on the part of the Court in the present instance. In the case of the district which is presenting this problem, the County Court has had the intention of setting aside sufficient funds from the anticipated annual revenue of the district to meet the annual payments in the machinery contract. Since Article 9 Chapter 42 R.S. Mo., 1929, seems to provide for the appointment of a trustee to handle such liquidation, none has been appointed. With this in mind, the situation suggests two questions, namely:

1. Does the County Court under such circumstances, have the authority to refuse to honor the petition of organization until the district in its present status has discharged its indebtedness?

2. If the Court does not have this authority, what disposition should be made of this indebtedness in order to protect the land owners of the district and the parties to the purchase contract for the machinery?

As is usual in rural road districts, there is a variance of opinion as to the types of district, which should be formed in this district and the county court has already been informed that other petitions will be filed pertaining to the same district. The Court is faced with the problem of incurring considerable expense in the publication of the present petition and any others which may be filed. While I am not certain as to the exact date on which the Court must take action, I am under the impression that there is only about one week remaining. In view of this circumstance, your opinion at your very earliest convenience, would be greatly appreciated."

Section 8032, R.S. Mo. 1929, provides for delivery of machinery by county court to district. Section 8033, R.S. Mo. 1929, provides as follows:

"Said board shall have sole, exclusive and entire control and jurisdiction over all public highways within its district outside the corporate limits of any city or village therein to construct, improve and repair such highways, and shall remove all obstructions from such highways, and for the discharge of these duties shall have all the power, rights and authority conferred by general statutes upon road overseers, and said board shall at all times keep the public roads under its charge in as good repair as the means at its command will permit, and for this purpose may employ hands at fixed compensations, rent, lease or buy teams, implements, tools and machinery, all kinds of motor power, and all things needful to carry on such road work: Provided, that the board may have such road work or any part of such work done by contract, under such regulations as the board may prescribe."

It will be noted from reading these sections, particularly Section 8032, R. S. Mo. 1929,

that this section gives the county court authority to turn over to the board of the newly organized district all tools and machinery used for working roads belonging to the district formerly existing within the territory embraced in such special district. From reading Article 9 there does not appear any legislative enactment which gives a road district organized under this article any power to enter into the type of contract which is outlined in your request, that is, one which will obligate the district to pay over a period of years and one which in the aggregate amount calls for the purchasing of an article in excess of the anticipated revenue for the year in which it is purchased.

In the case of *Hawkins v. Cox*, 66 S. W. (2d) 539, 1. c. 543, the court had before it what appears to us to be an identical situation with the one outlined in your request, except that the district involved in that case was organized under Article 10, Chapter 42, R. S. Mo., 1929, but we think the ruling in that case is applicable to the statement of facts stated in your letter. It will be noted in the *Hawkins* case that this was a case where in the road district purchased from the Weber Implement Company a five-ton cleatrac caterpillar tractor at the contract price of \$2500.00, and paid down the sum of \$500.00, together with \$93.00 for freight, and were to pay the sum of \$500.00 and interest on the balance at the rate of 6% per year until the sum of \$2000.00 had been fully paid. This suit was based upon an injunction brought by a taxpayer to prohibit the three road commissioners and the county treasurer ex-officio treasurer of the special road district from paying these warrants, and the court in this case in declaring the contract void and non-enforceable and the warrants issued in payment thereof, had this to say:

"The question presented here is whether the road district in question exceeded its powers in this respect, under its then financial condition, in making the contract of purchase just referred to, and, if so, to what extent. We think the first question must be answered in the affirmative. Municipal corporations, such as are special road districts, are by our

Constitution placed on what has been termed a cash basis. This has been accomplished by the provisions of section 12, article 10, of the Constitution, which provides that 'no county, city, town, township, school district or other political corporation or subdivision of the State shall be allowed to become indebted in any manner or for any purpose to an amount exceeding in any year the income and revenue provided for such year, without the consent of two-thirds of the voters thereof voting on such proposition, at an election to be held for that purpose.' The plain meaning of this constitutional provision is that any such municipal corporation may spend or contract to spend (become indebted) 'in any (calendar) year the income and revenue provided for such year,' but beyond that it cannot go in creating a debt for any purpose or in any manner, except by consent of two-thirds of the voters. This was so held in *Book v. Earl*, 87 Mo. 246, where this court said: 'The contracting of a debt in the future, by the county in any manner or for any purpose, in any one year exceeding the revenue which the tax authorized to be imposed would bring into the treasury for county purposes for such year, unless expressly authorized to do so by the assent of two-thirds of the voters' is prohibited. '* * * The evident purpose of the framers of the constitution and the people who adopted it was to abolish, in the administration of county and municipal government, the credit system and establish the cash system by limiting the amount of tax which might be imposed by a county for county purposes, and limiting the expenditures in any given year to the amount of revenue which such tax would bring into the treasury for that year. Section 12, supra, is clear and explicit on this point.

Under this section the county court might anticipate the revenue collected, and to be collected, for any given year, and contract debts for ordinary current expenses, which would be binding on the county to the extent of the revenue provided for that year, but not in excess of it. *

"This provision of the Constitution is self-enforcing and limits the power of this road district 'to become indebted in any manner or for any purpose' beyond the revenues provided for the year. Under the facts here, 'the income and revenue provided for the year' 1928, in which the contract was attempted to be made, was whatever would be derived from the levy of 50 cents then made on the \$100 valuation of the property in the district, amounting to approximately \$600. The contract of purchase being made in February, 1928, the commissioners had a right to contract with reference to the funds then on hand as a cash payment and the anticipated tax collections of that year on the rates levied, as such was 'the income and revenue provided for that year,' but no further. The road district had no power by contract of purchase made in February, 1928, to anticipate, appropriate, or tie up the revenues of the district for 1929 or after years not yet levied and the amount of which would depend on levies to be made, if at all, in such years."

* * * * *

"The contract for the purchase of and payment for this road machinery made in February, 1928, is void at least to the extent it attempted to obligate the district for payments beyond the cash payment made at the time and the amount to be paid out of the revenues provided for 1928. Anderson v. Ripley County, 181 Mo. 46, 65, 80 S. W. 263."

January 20, 1941

On the authority of the case of Hawkins v. Cox, supra, it is our opinion, in answering your first question which reads: Does the county court under such circumstances have the authority to refuse to honor the petition of organization until the district in its present status has discharged its indebtedness? that the contract referred to in your letter with the Machinery Company is void and non-enforceable on the part of the Machinery Company and as far as the re-organization of the district is concerned, this purported indebtedness would not affect the re-organization one way or the other. Of course, in this opinion we are not passing upon the moral obligations, but are interpreting the law as we read it in the book.

In answer to your second question which reads: If the Court does not have this authority, what disposition should be made of this indebtedness in order to protect the land owners of the district and the parties to the purchase contract for the machinery?, it follows from what we have said heretofore in this opinion that the indebtedness is void and non-enforceable if against the road district, and therefore the county court could proceed in accordance with the statutes and assist in the perfection of a re-organization and would not legally be bound to take into consideration or give cognizance to the purported outstanding warrants referred to in your request. Of course, our opinion and ruling is based upon the assumption that when the indebtedness was incurred that the sum of \$3500.00 was greatly in excess of the anticipated annual revenue of the district, as your request states, more than three times.

In conclusion we are of the opinion that the purported contract to pay the sum of \$3500.00, or the remaining balance thereof, is void and non-enforceable and would not affect the re-organization of the special road district which was organized under Article 9, Chapter 42, R. S. Mo. 1929, and therefore, the county court should not refuse to honor the petition of re-organization of the district on that ground.

In answer to the second question, we are of the opinion that it is not necessary to make any disposition in regard to the indebtedness heretofore outlined.

Respectfully yours,

APPROVED:

B. RICHARDS CREECH
Assistant Attorney-General

COVELL R. HEWITT
(Acting) Attorney General
WOJ/rv BRC/lw

W. O. JACKSON
Assistant Attorney General