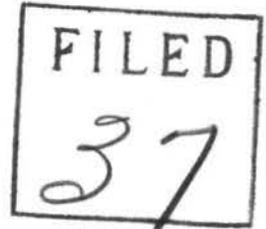


ROADS AND BRIDGES: Road overseers in counties under township organization operate under the provisions of Sections 8819 and 8820 Revised Statutes of Missouri, 1939, and not under the provisions of Section 8525 thereof.

October 16, 1942

Hon. Chas. K. Hart
Prosecuting Attorney
Linn County
Brookfield, Missouri



Dear Mr. Hart:

This is an acknowledgment of your request for an opinion dated October 10, 1942, relating to the duties of a road overseer in counties under township organization, which is as follows:

"I want to know whether or not you have passed on the meaning of Section 8525 R. S., 1939, with regard as to when work shall be done on roads. It has been put up to me by the Township Board of Parson Creek Township as to whether or not the grading of public road, that is, cleaning out the ditches on the side of the road, and grading the road can be done after August first; which section has a proviso that this section shall not be construed as preventing general or special road work after August First. This seems to me to be clear conflict and the township Board of Parson Creek Township desires to do this work at this time, which of course is after August First, and persons owning property abutting on said highway are objecting to this work at this time.

"If your Department has not construed this section, I will appreciate your opinion construing same, being Section 8525 R. S. 1939."

Section 8813 R. S. Mo. 1939, is as follows:

"All road laws of this state shall apply to counties under township organization, unless by their terms limited to counties not under township organization, or in conflict with the provisions of this law."

Section 8819 thereof, is in part as follows:

"It shall be the duty of the road overseer to begin his road grading and filling as soon in the spring as the weather permits, and shall give sufficient bond to the township board to have his roads graded and worked as well as the finances of his district will permit by August 1st.* * * * * It shall be the duty of all road overseers, in addition to those duties already assigned them, to keep all culverts and holes in the floor of bridges in his district repaired and to make an inspection of the culverts and bridges in his district in the spring and fall and see that they are kept in a safe condition and that the nails are driven down and that the dirt at the abutments is properly filled in."

Section 8820, R. S. Mo. 1939, is as follows:

"It shall be the duty of the road overseer to keep the roads in his district in as good repair as the funds at his command will permit, to have all brush and weeds found growing along the roadside of the public highway cut and removed during the month of August of each year, and wherever there is a square corner or a sharp turn in the road that in any way hinders progress or obstructs the view and by such obstruction endangers the life and limb of those traveling thereon, to have such corners rounded, and if necessity demands, it shall have such land as may be required to round corners condemned in accordance with the

law regulating such procedure in counties not under township organization, and he shall have the road drag or harrow used upon the public highway when the road would be improved thereby" (Underscoring ours).

Section 8833, R. S. Mo. 1939, is in part as follows:

"It shall be lawful for the county court of any county, upon the application of the township board of directors, to empower and authorize the county highway engineer of said county, under the direction of the township board of such township to survey, locate and plat the public highways of such township; and when such plat shall have been completed and approved by the township board, it shall be filed in the office of the township clerk, together with the minutes and report of such survey, to be kept by such township clerk as a part of his official records, the expenses of such proceeding to be paid out of the road fund of the township."

Section 8665 R. S. Mo. 1939, relating to the holding of annual meetings of road overseers upon call of the highway engineer, is in part as follows:

"Any overseer failing to attend any such annual meeting without reasonable excuse shall, upon complaint of the county highway engineer, be removed from office by the township board, as the case may be."

Section 8525, Article 3, Chapter 46, R. S. Mo. 1939, is as follows:

"All grading and general road work or improvements, except in the opening of new roads

Hon. Chas. K. Hart.

- 4 -

October 16, 1942.

or work made necessary by a relocation of change of road, shall be done prior to August first of each year: Provided, however, this section shall not be construed as preventing general or special road work after August first."

Section 8514, Article 3, Chapter 46, R. S. Mo. 1939, is in part as follows:

"The county courts of all counties, other than those under township organization, shall, during the month of January, 1918, with the advice and assistance of the county highway engineer, divide their counties into road districts, all to be numbered, of suitable and convenient size, road mileage and taxable property considered."

In view of the provisions of Sections 8813 and 8514, R. S. Mo. 1939, supra, clearly it was not the intention of the Legislature that said Section 8525, supra, should apply to and control the road overseers in counties under township organization. Section 8514, supra, and other sections of such Article - including said Section 8525 - apply particularly to road overseers in counties not under township organization.

CONCLUSION

Therefore, it is the opinion of this Department that said Section 8525, Article 3, Chapter 46, R. S. Mo. 1939, does not apply to counties under township organization. It is further our opinion that the road overseers in such counties under township organization must operate under the provisions of Sections 8819 and 8820, Article 17, Chapter 46, of the Revised Statutes of Missouri, 1939.

Respectfully submitted,

S. V. MEDLING
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General

SVM/mc