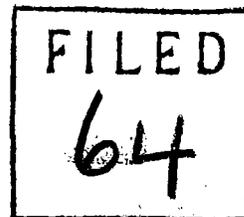


SPECIAL ROAD DISTRICTS:
COUNTY COURT:

Special road district created under Article 11, Chapter 46, R.S. Mo. 1939, cannot pay for initial cost of incorporation, neither can county court pay for same. Special road district entitled to money held by treasurer from levy on property in district, upon timely application.

June 25, 1945



Mr. Jack Moulder
Clerk of the County Court
Camden County
Camdenton, Missouri

Dear Sir:

This will acknowledge receipt of your request under date of June 1, 1945, for an official opinion from this department, which reads:

"May I have your official opinion upon the following questions:

"A special road district has just been incorporated in this county under the provisions of Article 11, Chapter 46 R.S. 1939. The petitioners for incorporation employed counsel to aid them in the preparation and presentation of the petition and in perfecting the incorporation of the district. Other expenses of the incorporation include newspaper publication fee and fee and mileage of the sheriff in posting notices of the presentation of the petition.

"Can all or any of the above items, attorney fee or court costs, be paid by the special road district from road district funds? Or can all or any of the above items be paid by the County Court?

"Should any funds in the county treasurer's hands at the date of the incorporation of the special road district to credit of the road fund of the territory now included in the special road district be now transferred to the special road district

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and administered by the commissions of the special road district, or does the county court continue to administer such road money balance now on hand until it is exhausted?"

The special road district mentioned in your request was incorporated under Article 11, Chapter 46, R.S. Mo. 1939. We are unable to find any decision wherein the courts have directly passed upon the right of such a special road district to pay for the initial cost of incorporating said district.

Section 8710, R.S. Mo. 1939, provides that the county court may divide the county into special road districts and such district shall be a body corporate and possess the usual powers of a public corporation. Said section reads:

"County courts of counties not under township organization may divide the territory of their respective counties into road districts, and every such district organized according to the provisions of this article shall be a body corporate and possess the usual powers of a public corporation for public purposes, and shall be known and styled '_____ road district of _____ county,' and in that name shall be capable of suing and being sued, of holding such real estate and personal property as may at any time be either donated to or purchased by it in accordance with the provisions of this article, or of which it may be rightfully possessed at the time of the passage of this article, and of contracting and being contracted with as hereinafter provided. Districts so organized may be of any dimensions that may be deemed necessary or advisable, except that every district shall be included wholly within the county organizing it and shall contain at least six hundred and forty acres of contiguous territory: Provided, that the county courts shall not have power to divide the territory within the corporate limits of a city having a population of 150,000 into such road district."

Under Section 8711, Laws of 1941, page 529, the procedure for incorporating such special road districts is set out and provides for the filing of a petition, properly signed by the owners of a majority of the land in said proposed district, the giving of the notice, etc., and concludes in the following manner:

" * * * Whenever an order is so made incorporating a public road district such district shall thereupon become, by the name mentioned in such order, a political subdivision of the state for governmental purposes with all the powers mentioned in this section and such others as may be conferred by law."

Certainly there is no question from a reading of the foregoing provision from Section 8711, supra, but that the General Assembly fully intended to limit such special road districts to those powers mentioned in that provision and other statutory and constitutional provisions.

In *Wheat v. Platte City Benefit Assessment Special Road District of Platte County*, and *Same v. State Highway Commission of Missouri*, 52 S.W. (2d) 856, l.c. 858, the court held that such a special road district was not a political subdivision of the state, as those terms are used in the provision of Section 12, Article VI of the Constitution of Missouri. In so holding the court said:

" * * * * nor is the defendant special road district a 'political subdivision of the state in a jurisdictional sense, and within the meaning of section 12, art. 6 of the Constitution,' * * * * ."

In *Wilson v. King's Lake Drainage & Levee District*, 139 S.W. 136, l.c. 140, the court likewise held that the words "other political subdivision" of the state, as used in Section 12, Article VI, following as they do the word "county," mean such political subdivisions as may be created having powers similar to those of a county, and do not refer to townships, school districts, levee districts, drainage districts, and such like minor political subdivisions of the state.

However, these decisions are based entirely upon the construction placed upon Section 12 of Article VI, which provision deals with the jurisdiction of the Supreme Court when certain

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political subdivisions are parties, and does not hold that such special road districts are not political subdivisions for governmental purposes as specifically provided in the statute. We must, therefore, conclude that a special road district organized under Article 11, Chapter 46, R.S. Mo. 1939, is a body corporate and a political subdivision of the state.

As a general rule private corporations are not liable for services rendered by a promoter, however the courts have held that private corporations may pay initial expense of incorporation after the corporation has been formed, upon an implied promise to pay for same. (See *Taussig v. St. Louis and Kirkwood Railroad Co.*, 166 Mo. 28, l.c. 38; *VanZandt v. Wholesale Gro. Co.*, 196 Mo. 640.) Furthermore, the Revised Statutes of 1939 specifically provide certain drainage districts may pay for the expense of incorporating said districts, as well as other expenses. However, in the case of incorporation of the special road districts organized under Article 11, Chapter 46, supra, this is not the case, which, at least by implication, leads us to believe that the lawmakers never intended such special road districts should pay for the incorporation of the district or they would have so provided.

Under Section 12399, R.S. Mo. 1939, before the county court may organize or incorporate any drainage district, it is required that there shall be filed with the petition a bond in the sum of not less than \$50.00 per mile, payable to the State of Missouri, signed by one or more petitioners, to be approved by the county court, conditioned for payment of all costs and expenses if the prayer of the petition be not granted, or the petition be for any cause dismissed.

The construction of drainage ditches by the county court, under Chapter 79, Article 3, R.S. Mo. 1939, Section 12400, provides that the county court may appoint one or more attorneys, satisfactory to the owners of a majority of the acreage represented, to assist the officers, and that the cost of such attorneys shall be taxed as costs in the case.

Section 8715, R.S. Mo. 1939, provides that the county court may levy a poll tax upon property within said district and further provides how said revenue shall be spent.

Section 8719, R.S. Mo. 1939, provides for costs of petition and other expenses for the construction of a special road.

In *Lindeman v. Calamus Irrigation*, 238 N.W. 762, l.c. 763, 122 Neb. 1, the court held that irrigation districts are special

corporations whose officers' powers are limited by the statute creating them. In so holding the court said:

" * * * * In this state irrigation districts are public corporations and the powers of its officers and directors are limited by statute under which it is created. * * * * "

In *Jones v. Jefferson County Drainage Dist. No. 6*, 139 S.W. (2d) 861, 1.c. 862, the court held that drainage districts created under statutes enacted under authority of the Constitution are political subdivisions of the state of the same nature and stand on exactly the same footing as counties, or precincts, or any other political subdivisions of the state. In so holding the court said:

"Drainage districts created under the provisions of Chapter 7 of Title 128, Art. 8097, V.C.S., enacted under authority of Art. 16, Sec. 59a, of the State Constitution, Vernon's Ann. St., are political subdivisions of the state of the same nature and stand upon exactly the same footing as counties, or precincts, or any of the other political subdivisions of the state. (Cases cited) "

In *In re Bank of Anampa*, 157 Pac. 1117, 1.c. 1118, 29 Idaho 166, the court held that an irrigation district, organized under the laws of that state, is a public corporation and the treasurer of said corporation is a public officer and moneys of such district received by said treasurer are public moneys within the meaning of the statute. The court said:

"We think it will be conceded at the outset that irrigation districts organized under the laws of this state are public corporations; that the officers of such irrigation districts are elected by the electors of the district and are public officers. As such they are required to qualify and furnish an official bond for the faithful performance of the duties of their office in accordance with the law providing for the creation of irrigation districts and defining the power of such districts and the duties of the officers

of those districts. Since all officers of an irrigation district are public officers, moneys paid to the treasurer of such district would constitute a payment to and a receipt by a public officer who would be the custodian of public moneys. (Cases cited) "

One of the cardinal rules of construction is that a court must harmonize statutes, if possible, and give force and effect to each. In *Little River Drainage Dist. v. Lassater*, 29 S.W. (2d) 716, 1.c. 718, 325 Mo. 493, the court said:

"It is the duty of courts in construing two or more statutes relating to the same subject, to read them together and to harmonize them, if possible, and to give force and effect to each. 36 Cyc. 1149. * * * * * "

Therefore, since this special road district is not a private corporation, but a body corporate and a political subdivision of the state for governmental purposes, the funds belonging to the district being in the nature of a public money, said money should only be disbursed as authorized by law, and, in the absence of authority to pay for the costs of incorporation, said special road district cannot pay for same.

You further inquire if the county court may pay the costs of incorporation. We are likewise unable to find any authority for the county court to pay such costs and, in the absence of such authority, it cannot assume such burden. The county court is only the agent of the county and has only such power as is granted by law. See *Jensen v. Wilson Township, Gentry County*, 145 S.W. (2d) 372, 1.c. 374, 346 Mo. 1192, wherein the court held that a county court is only the agent of a county with no powers except those granted and limited by law, and, like all other agents, it must pursue its authority and act within the scope of its powers. In so holding the court said:

" * * * * A county court is only the agent of the county with no powers except those granted and limited by law, and like all other agents, it must pursue its authority and act within the scope of its powers. *State ex rel. Quincy, etc., Ry. Co. v. Harris*, 96 Mo. 29, 8 S.W. 794. In auditing claims a county court acts merely as the fiscal or administrative agent of the county. (Cases cited) "

Therefore, finding no statutory authority for the county court assuming the costs of the incorporation, we naturally must assume that the county court cannot pay for same.

You also inquire if any funds in the County Treasurer's hands at the date of the incorporation of a special road district, to the credit of the road fund of the territory now included in the special road district, should be transferred to the special road district and be administered by the commissioners of the special road district. The courts have, on several occasions, held that upon timely application for said funds the special road district is entitled to receive all moneys collected as taxes on property within the district; as was held in State ex rel. Monett Special Road District v. Barry County, 302 Mo. 279, l.c. 291, wherein the court said:

" * * * * The three sections (10682, 10683 and 10818) as they now stand do not indicate any change of the legislative purpose with respect to the distribution of road and bridge taxes collected upon property within special road districts. Section 10683 provides that all that part of the special road and bridge tax which shall be collected and paid upon property lying within any road district shall when paid into the county treasury be placed to the credit of the district from which it arose. Section 10682 which directs the levy of a road and bridge tax in connection with the general levy for county purposes makes no provision for its distribution. But Section 10818, voicing the legislative purpose with respect to special road districts, provides that all money collected 'as county taxes for road purposes, or for road and bridge purposes, by virtue of any ... law,' upon property within a special road district, shall be set aside to the credit of such special road district. The conclusion that a special road district is entitled upon timely application therefor to receive all moneys collected as taxes for road and bridge purposes upon property within its boundaries is unavoidable."

See also State ex rel. Special Road District v. Holman, 305 Mo. 195, and Little Prairie Special Road District v. Pemiscot County,

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297 Mo. 568.

Conclusion.

Therefore, it is the opinion of this department that the Special Road District incorporated under Article 11, Chapter 46, R.S. Mo. 1939, cannot pay for the initial expense of incorporating said special road district; neither can the county court assume this expenditure.

Furthermore, it is the opinion of this department that the commissioners of said special road district, upon timely application, are entitled to the funds levied upon the property within the special road district for road purposes and held by the Treasurer.

Respectfully submitted,

AUBREY R. HAMMETT, JR.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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