

SPECIAL ROAD DISTRICTS:  
FOURTH CLASS, NON-TOWN-  
SHIP COUNTIES: TREASURER'S  
DUTY:



Treasurer of fourth class, non-township county also treasurer of special benefit assessment road district organized under Sections 233.170 to 233.315, RSMo 1949. When district commissioners draw warrant on treasurer issued in payment of construction or improvements on district's roads to member of court of said county, and warrant is regular on face, it is duty of treasurer to cash same out of available district funds. He and sureties will not incur liability on official bond.

October 2, 1953

Honorable Bill Davenport  
Prosecuting Attorney of  
Christian County  
Ozark, Missouri

Dear Sir:

This is to acknowledge receipt of your recent request for a legal opinion of this department which reads as follows:

"We request an opinion upon the following question: Will the County Treasurer of a fourth class county incur any personal liability because of the payment of warrants, regular on their face, issued by a special road district in payment for road work done by a member of the County Court of said County."

From the facts upon which the opinion request is based, it appears that the County of Christian is one of the fourth class and not operating under township organization. For several years a party has done construction and improvement work on the special road districts of the county and the commissioners of said districts have issued warrants upon the county treasurer in payment of such road work.

The statement has been made that the quantity or quality of the work performed has not been questioned and that the commissioners are well pleased with such work. However, it appears that at the time the said person was doing the road work he was a member of the county court of said county and the question has arisen

Honorable Bill Davenport

as to the legality of the road construction contract between the board of commissioners of the special road districts involved and the county judge and also as to whether or not in the event the county treasurer cashes warrants drawn upon him by the commissioners, and given in payment to the county judge, said treasurer will incur any personal liability himself or in behalf of the sureties on his official bond. The general rule regarding a public officer's liability in paying out public funds has been stated in Sec. 306, page 111, 43 Am. Jur., as follows:

"Public officers who have charge of public funds and public money are charged with the duty, as trustees, to disburse and expend the money for the purposes and in the manner prescribed by law. They are liable if they divert the trust funds from the governmental purposes for which they were collected. Mere good faith in making an improper payment of public funds is not recognized as any excuse whatever. Nor is it material that in other respects the duties of the officer may be discretionary or legislative if in respect of disbursement they are merely ministerial. Where, however, an officer disburses public money on warrants or orders, fair on their face in good faith, and without knowledge of the facts, showing the illegality of the claims on which the order or warrant purports to have been issued, he is not necessarily liable for a return of the money on a showing that the claim was not in fact a legal charge against the municipality he represents, although it is otherwise if he knows that the warrants are drawn for illegal claims.

"Where the fiscal court of a county and the taxpayers have for many years allowed public money to be expended in an irregular manner, the county may be estopped from recovering the money from the officer making the expenditure, if he has made it in good faith for an authorized purpose

Honorable Bill Davenport

and the county has received the benefit. But the mere fact that malfeasance in the disbursement of public funds has covered a period of years does not in any way excuse the officers participating in the misconduct. And it is in general held that custom or usage does not justify a departure from plain statutory mandates or prohibitions in respect of the manner in which public money shall be paid or the public credit pledged.

"It is in general held that officers are not liable for paying out public money in reliance on an unconstitutional statute were the payment was made in good faith before the law was held unconstitutional.

"Obviously, in respect of many expenditures of public funds, the legislature must leave much to the discretion and judgment of public agencies in determining the purpose for which such money will be spent, within the limits of the authority granted, and courts will not interfere unless there is a clear departure from the legislative authority."

The warrants issued by the road commissioners are described as being "regular on their face," and from the meaning of the term "regular on their face" as generally applied to written instruments, we assume that the warrants in question were issued by the legally constituted board of commissioners of the special benefit assessment districts of the county, which boards, as we have already noticed, are the bodies authorized under the provisions of the applicable statutes to issue warrants in payment of the obligations of such districts. We further assume that the warrants were legal in form and contained nothing which would notify or fairly apprise the county treasurer that they were issued without authority.

Section 233.170, RSMo 1949, provides for the formation of special benefit assessment districts located in non-township organization counties and reads as follows:

"1. County courts of counties not under township organization may divide the territory of their respective

Honorable Bill Davenport

counties into road districts, and every such district organized according to the provisions of sections 233.170 to 233.315 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 sections 233.170 to 233.315, or of which it may be rightfully possessed at the time of the passage of sections 233.170 to 233.315, and of contracting and being contracted with as herein provided.

"2. 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 one hundred fifty thousand into such road district.

Subsection 2 of Section 233.185 provides that the county treasurer shall be the treasurer of the road district. Such subsection reads as follows:

"2. Meetings of said commissioners shall be held thereafter at such time and place as they may agree upon in writing, or the president or vice-president may order. The treasurer of said board shall be the county treasurer, and he shall be responsible on his bond for the faithful keeping of all moneys deposited with him by reason of this law. The president of the board shall preside at all meetings thereof, he shall sign the minutes

Honorable Bill Davenport

and records of the board, and all warrants that may be drawn upon the treasury for the payment of any money out of the treasury on account of the funds belonging to said district, and exercise a general supervising control over the work of such commissioners, and in a general way may do all the acts and things that the said board may empower him to do, and such other as may be authorized by law. During absence of the president from the county, or from any meeting of the board, the vice-president shall perform the duties herein conferred upon the president."

In view of the fact that the statement is made that the warrants of the districts were issued on the treasurer of the county to meet the district's obligations, then the districts referred to in the opinion request are the special benefit assessment districts organized under Section 233.170, supra, since section 233.185, supra, provides that the treasurer of such boards shall be the county treasurer. The treasurer of an eight mile district is not the county treasurer as will be seen from the provisions of Section 233.055, RSMo 1949. It might be contended that the warrants were not regular on their face, and that the transaction between the county judge and the county road districts were void because the judge is a public officer, and as such cannot contract the board or body of which he is a member, as has been declared in the case of Nodaway County v. Kidder, 344 Mo. 795. Section 49.190, RSMo 1949, prohibits a county judge from entering into any county contract when he is a member of the court of which the contracting county is a party. However, none of the rules or court decisions mentioned above have any application to the facts before us for reasons to be given hereafter.

Section 233.170, supra, specifically provides that road districts organized under this section are bodies politic and corporate with powers to perform the actual and necessary corporate functions and also it was held to be true in the case of State ex rel. v. Thompson, 315 Mo. 57, that a road district is a municipal corporation.

The road district as a corporation would be an artificial being with only those powers which are conferred upon it by law, and as such it would have an existence separate and apart from the county in which it was located, for the purpose for which it was organized.

Honorable Bill Davenport

Subsection 2 of Section 233.190, supra, in referring to the road districts organized under Section 233.170, supra, states that the board of commissioners shall have the sole, exclusive and entire control over the public highways, bridges and culverts within the district, and among other matters, the commissioners have power to contract for material, machinery or labor to be used upon the roads of the districts.

While no statutory restrictions are placed upon the commissioners as to what persons they may employ on the roads or bridges of said districts, the commissioners could not legally employ any one who was a member of the board of commissioners. The facts given above do not so indicate, and we assume that the county judge doing the work is not a member of the said board, therefore, the said judge is not entering into any contract of employment with any body or board of which he is a member. The board of commissioners is legally authorized to enter into the particular contract in question and the transaction is assumed to be free of fraud, and such board had a right to issue warrants on the county treasurer as treasurer of the board with which to pay the judge for work done on the district roads. The warrants were therefore issued legally and regularly on their face within the commonly accepted meaning of the term and it was the duty of the treasurer to cash such warrants out of any available funds belonging to said district. The treasurer, or the sureties upon his official bond could not incur any personal liability when cashing the district's warrants given to the county judge for above mentioned purposes, and when all such warrants were regular on their face.

#### CONCLUSION

It is therefore the opinion of this department that the treasurer of a fourth class, non-township county is also treasurer of a special benefit assessment road district of said county, organized under the provisions of Section 233.170 to Section 233.-315, inclusive, RSMo 1949. That when the board of commissioners of such district draw a warrant upon said treasurer issued in payment of construction and improvement work done by a member of the court of said county, the warrant is regular on its face, it is the duty of the treasurer to cash same when presented for payment, out of any available funds of the district, and in so doing the treasurer and the sureties upon his official bond will not incur any personal liability.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Paul N. Chitwood.

Very truly yours,

JOHN M. DALTON  
Attorney General