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ATTORNEY GENERAL

OFFICES OF THE
ATTORNEY GENERAL OF MISSOURI
JEFFERSON CITY

February 11, 1976

OPINION LETTER NO. 30

Honorable Robert S. Drake, Jr.
Prosecuting Attorney
Benton County Courthouse
Warsaw, Missouri 65355

Dear Mr. Drake:

This is in response to your request for an opinion from this office as follows:

"Can the boundaries of the two road districts established in Benton County differ from the boundaries of the voting districts in Benton County established pursuant to Section 49.010, thereby depriving certain members of the county the right to vote for the county court judge who controls the maintenance and construction of the roads in their district?

"Historically, the Osage River has operated as the dividing line in Benton County, both for the voting districts electing the north side and south side county judges and for the two common road districts located in the county. In approximately 1973, the voting districts were changed to include Lindsey Township in the voting district of the south side judge. Lindsey Township lies north of the river but all of the roads in Lindsey Township are under the direct supervision of the north side judge. The north side judge and the south side judge operate as the overseers of the roads in their district and have complete discretion as to

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what maintenance and construction work is done on the roads. The south side judge has had numerous complaints from the voters of Lindsey Township concerning the condition of their roads, but the maintenance of the roads is supervised by the north side judge who is not voted on by the residents of Lindsey Township. As a practical matter, the great majority of the residents of Benton County feel that the major job of the north and south side judges is that of road overseer, and under the current situation, the south side judge cannot exercise any discretion concerning the roads that lie in that portion of his voting district lying north of the river."

You further state that:

"Beginning in January of 1972 the district's line for the two County Court Judges were changed by moving one township, Lindsey Township, from the north side County Judge's district to the south side County Judge's district. The lines for Road District #1 and Road District #2 have not been changed. At the present time the residents of Lindsey Township are in Road District #1 or the North side road district while they vote for the south side Judge."

You further state in your memorandum:

"The question is whether or not a common road district must be a part of the County Court District in which the residents of the common road district vote."

Benton County is a third class county.

We do not, in this opinion letter, pass on the validity of the action of the county court in allegedly giving exclusive authority over roads and bridges in a certain area to one associate county judge and exclusive authority over roads and bridges in the rest of the county to the other associate county judge. See Sections 49.140 and 49.150, RSMo. In this opinion letter, we confine ourselves to passing on the question of whether there is any relationship between the boundaries of common road districts and county court judge districts.

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You state in the memorandum you have submitted that you were unable to find any statute or court decision upon this matter. Likewise, we have been unable to find any statute or court decision involving this precise question and must rely on our interpretation of the statutes involved.

Section 49.010, RSMo, provides as follows:

"The county court shall be composed of three members, to be styled judges of the county court, and each county shall be districted by the county court thereof into two districts, of contiguous territory, as near equal in population as practicable, without dividing municipal townships."

Under this statute, the judges of the county court are required to divide their county into two districts, of contiguous territory, as near equal in population as practicable, without dividing municipal townships. It is our view that this is a matter of discretion for the county court to determine the boundary lines of each district as provided in Section 49.010.

The statute providing for the county court to divide counties not under township organization into common road districts is found in Section 231.010, RSMo, which provides 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. Said courts shall, during the month of January biennially thereafter, have authority to change the boundaries of any such road district as the best interest of the public may require."

Under this statute, the county court has authority to establish common road districts in their county, determine their number and size, and express authority to change the boundaries of any such road district as the best interest of the public may require. This likewise is a matter of discretion as to the size of the district and boundaries of each road district.

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We find no requirement that the boundaries of a county court judge district coincide with the boundaries of one or more common road districts, and we find no relationship as a matter of law between the boundaries of county court judge districts and the boundaries of common road districts.

Yours very truly,

A handwritten signature in cursive script, appearing to read "John C. Danforth".

JOHN C. DANFORTH
Attorney General