

ROADS:

Board of Commissioners of Special Road District organized under Article 10, Chapter 46 R. S. Mo. 1939, 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 this control shall include all streets dedicated to the public use which may lie in an unincorporated community within the special road district.

June 21, 1950.

4/21/50

Honorable William Lee Dodd,
Prosecuting Attorney
Ripley County,
Doniphan, Missouri.



Dear Sir:

This department is in receipt of your recent letter requesting an opinion on the following questions:

"The Doniphan Special Road District was organized under Article 10, Chapter 46, Revised Statutes of Missouri, 1939, Now Section 8562 R. S. 1939 says that the County Court shall have control of streets and alleys in unincorp. villages, but does the section apply to streets and alleys in unincorp. villages located within the boundary of a Special Road District organized under Article 10, Chapter 46, R. S. 1939? Does Section 8682 R. S. 1939, give the control of streets and alleys (public roads) to the Commissioners of Doniphan Special Road District? Does Section 8685, R. S. 1939, give this control to Doniphan S.R.D.?"

"Are streets and alleys in unincorp. villages treated differently than public roads?"

"The road in question is a street dedicated to public use and located in an unincorp. village within the limits of the Doniphan Special Road District."

Mo. R. S. Section 8562 reads as follows:

"All streets and alleys in unincorporated towns and villages shall be under the control of the county court, and governed by the laws relating to roads and highways." (Emphasis ours).

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Honorable William Lee Dodd.

In addition to the statutory powers conferred upon the county court to act as the administrative body charged with the duty of control, construction, maintenance, upkeep and repair of county roads, Article 10, Chapter 45, R. S. Mo. 1939, provides for the organization of special road districts wherein the duty to construct and maintain the roads within the special road district is divested from the county court and invested in a board of commissioners. Section 8673 reenacted L. 1945, p. 1494, authorizes the organization of a special road district in these words:

"Territory not exceeding eight miles square, wherein is located any city, town or village containing less than one hundred thousand inhabitants, may be organized as hereinafter set forth into a special road district.* * *"

Provision is then made within this article for the organization of a Board of Commissioners and a part of their duties are prescribed by Section 8682, R. S. Mo. 1939, in these words:

"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."

Section 8562 (cited supra), which confers control of streets and alleys in unincorporated villages upon the county court must be treated in the same fashion as other general statutes conferring such control upon the county court for all county roads and bridges, and Section 8682 transfers this control to the special road district by providing for a board of commissioners to 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. The roads, streets and alleys lying within an unincorporated village must be under the same exclusive and entire control and jurisdiction of the Board of Commissioners of the special road district as are all roads outside of the corporate limits of a city, town or

Honorable William Lee Dodd,

village.

It is the opinion of this department that streets and alleys of an unincorporated village are treated no differently than any other public roads lying within the special road district, and outside an incorporated city, town or village.

Parts of several other sections of this article enumerate the powers and duties of the Board of Commissioners to control the construction, maintenance and repair of roads within the special road district. You may wish to note such sections from the 1939 R. S. Mo. as 8674, 8681, 8685, 8688, 8691, 8696, 8697 and 8700, which confer upon the Board of Commissioners of the "eight mile" special road district those duties which would otherwise devolve upon the county court.

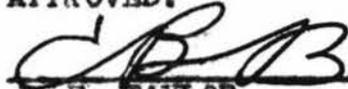
CONCLUSION.

The Board of Commissioners of a special road district organized under Article 10, Chapter 46, R. S. Mo. 1939, 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 this control shall include all streets dedicated to the public use which may lie in an unincorporated community within the special road district.

Respectfully submitted,

JOHN E. MILLS
Assistant Attorney-General

APPROVED:


J. E. TAYLOR
Attorney-General.

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