

**Highways—Improvement of County Roads—Expense of Improvement of County Roads—Statutes Construed, Chap. 145 of 1917 Session Laws.**

Chapter 145 of the 1917 Session Laws construed.

May 8th, 1918.

Mr. Paul Pratt, Chief Engineer,  
State Highway Commission,  
Helena, Montana.

Dear Sir:

I am in receipt of your letter of recent date submitting for my opinion the following:

1. After a County Road has been established and declared by the Board of County Commissioners, said road lying within the boundaries of a Special Road District, is it mandatory upon the board to open and improve said road? Must the Directors of the Special Road District open and improve said road at the expense of the Road District? May the Directors open and improve said road at the expense of the County? In any event is the opening and improvement of any road lying within the boundaries of a Special Road District a charge against the County or the Special Road District?

Section 1, Chap. 145, Sess. Laws 1917, provides in substance that the purpose of such road districts shall be to provide for the proper care, supervision and maintenance of existing highways within such road districts, the board of county commissioners, county surveyors

and special deputy surveyor to continue to have and exercise the authority now provided by law for them in *laying out, establishing and constructing new roads and bridges*, repairing and maintaining such roads and bridges as the county commissioners may by resolution determine, and repairing bridges and roads when the estimated cost of such repairing exceeds \$300 per mile. This section further provides that bridges 12 feet and under shall be known as district bridges, and shall be constructed by the road district, while bridges over 12 feet shall be known as county bridges and constructed by the county.

While the provisions of this sections appear to be slightly inconsistent, yet I believe that the intention of the legislature was substantially as follows:

The board of county commissioners must lay out, establish and construct all new roads and bridges, regardless of their location or cost, and the cost thereof must be paid by the county and not by the road district, the road districts having nothing whatever to do with the laying out, establishing or construction of new roads or bridges; the board of county commissioners must repair all roads and bridges; when the estimated cost thereof will exceed \$300 per mile, such cost to be paid by the county; the board of county commissioners may assume the duty of repairing and maintaining any road or bridge, regardless of location, by adopting a resolution to such effect, and upon such action being taken the road district, in which such road or bridge is located, is relieved from the duty of repairing and maintaining the same, and it becomes the duty of the county to repair and maintain the same at the expense of the county; the road districts must care for, repair and maintain all roads and bridges, after the same have been laid out, established and constructed by the county, at the expense of the road districts, unless the estimated cost of repairs exceeds \$300 per mile, when such repairs must be made by the county commissioners at the expense of the county, or unless the road districts are relieved from their duties by the county assuming them through the adoption by the board of county commissioners of the proper resolutions.

The foregoing is, I believe, the construction which should be given to the provisions of Sec. 1, and fully answers your first question. The second question submitted by you was as follows:

2. In the case of bridges that are constructed in a Special Road District at the expense of the county, must the county pay for earth approaches?

Section 4016 of the Revised Codes defined the word "bridges" as including the approaches thereto and culverts. In the case of *Jenkins vs. Newman*, 39 Mont. 77, 101 Pac. 625, it was held that the approaches to a bridge are a part of the bridge. Therefore in answering your second question, you are advised that it is my opinion that when a bridge in a road district is constructed by the county, the approaches thereto, whether they are of earth, or other material, are a part of the bridge and must be constructed at the expense of the County.

The third question submitted by you was as follows:

3. If the directors of such a Road District are elected at the regular School Election; and if the boundaries of the School District include two or more proposed road Districts (or the reverse) what procedure is necessary in order to determine who may or may not vote for Director of the proposed District or Districts?

Section 3 provides that the directors of road districts shall be elected at the general election, while Section 13 provides that they shall be elected at an election held at the time and place each year provided for the election of school trustees.

Article XI, Sec. 10, of the Constitution, provides that the legislature shall provide that all elections for school district officers shall be separate from those elections at which state or county officers are voted for.

While it may be true that the directors of road districts are not, strictly speaking, "County Officers", yet, when we consider the purpose of the above provision of the Constitution, and the evils sought to be prevented, it seems apparent that the provisions of Section 13 are in violation of such provision of the Constitution, and that therefore, the provisions of Sec. 3 must control and must be followed in the election of directors for road districts. (See opinion rendered at request of Mr. Falkner Haynes, County Attorney, Custer County, on March 30, 1918).

All of your questions which has reference to school districts may, therefore, be eliminated from consideration, and your question may be considered in the following form:

"3. If the boundaries of a voting precinct include two or more proposed road districts (or the reverse) what procedure is necessary in order to determine who may or may not vote for directors of the proposed district or districts?"

Section 14 and 15 of this act fully answers the above question. Sec. 14 provides that every taxpaying elector, who is legally qualified to vote at a general election, and who is a bona fide resident and taxpayer in the district for thirty days preceding the day of election, shall be entitled to vote. Any person offering to vote may be challenged and any judge of election, in order to determine the qualifications of such electors so challenged, may administer to him the oath therein prescribed, while Section 15 provides that if any person challenged shall refuse to take such oath, his vote shall be rejected, and if any person shall be guilty of voting illegally, he shall be punished as provided in the general election laws. No other procedure is provided for determining who are and who are not entitled to vote, consequently the provisions of Section 14 and 15 must govern.

The fourth question submitted by you is as follows:

"4. As the boundaries of the Special Road Districts are included ithin one or more voting precincts what would be the effect on existing Road Districts if the County Commissioners change the boundaries of the voting precinct?"

The act contains no provisions to meet such a contingency, and evidently the legislature never considered the fact that such a condition might arise. However, Section 4 of this act provides that the petition for the creation of a district, to be filed with the board of county commissioners, shall ask for the creation of a district with boundary lines conforming to one or more voting precincts, while Section 5 requires the board of county commissioners, upon establishing a road district to make an order defining the boundary lines of the road district. It would therefore appear that when a district is established and its boundary lines defined, the changing of the boundary lines of a voting precinct would have no effect whatever on the boundary lines of the road district, but it would still retain the same boundaries as when established.

The fifth question submitted by you is as follows:

"5. May the County Commissioners at their option declare all voting precincts Special Road Districts?"

This question must be answered in the negative. The only method provided in the act for establishing special road districts is found in Sections 4 and 5. While Sec. 4 provides that if the county is not divided into special road districts as provided in Sections 3 and 4, the registered voters of any voting precinct or precincts may file a petition praying for the establishment of a special road district, etc., no other method is provided in either Secs. 3 or 4 or in any other section for the establishment of special road districts. Therefore a special road district cannot be established by any other method or in any other manner than that provided in Sections 4 and 5.

Your sixth and last question submitted is as follows:

"6. Is the cost of surveying a new road a charge against the County or Special Road District?"

The cost of surveying a new road is a charge against the county and not against the road district. The duty of laying out, establishing, opening and constructing new roads is upon the board of county commissioners, the only duty imposed upon the road districts being that of caring for, repairing and maintaining roads and bridges after they have been laid out, established and constructed by the county acting thru the board of county commissioners.

Respectfully,

S. C. FORD,  
Attorney General.