

Highways, Special Road District, Power of Directors to Contract—Special Road District, Power of Directors to Contract. Special Road District, Power of Directors to Issue Warrants.

The directors of special road district have power to contract for road work on highways.

The Directors of a special road district have no authority to issue warrants for the payment of work in repairing highways.

November 24, 1920.

Mr. I. S. Crawford,
County Attorney,
Forsyth, Montana.

Dear Sir:

I am in receipt of your letter of recent date submitting certain questions in connection with Special Road Districts under Chapter 145, Session Laws 1917.

1. Has the Board of Directors of a Special Road District authority to let contracts for road work, and especially the repairing of existing roads within their districts, without authority from the Board of County Commissioners?

In Section 2 of Chapter 145, we find the following:

“Except as herein limited, all supervision, repair and maintenance of roads and highways shall be done by and be a charge upon the Special Road Districts; provided that when the County Surveyor, or Special County Surveyor, as provided in this Section, may estimate any repair or construction work on any bridge or road to exceed three hundred (\$300.00) dollars per mile in cost in any one year, such repair or construction shall be a charge upon the county.”

In Section 6 we find the following:

“Within the limits of the Special Road Districts, the said Board of Directors shall have all the powers heretofore granted to Road Supervisors, and shall have full authority over and are hereby charged with the duty of the general repair and maintenance of all roads and public highways and all bridges of twelve feet in length and under, within their districts, and they shall keep same in a state of proper repair and safety for public travel thereover.”

In Section 7, the following:

“The said Board of Directors shall have the further power and authority to enter into contracts for purchase of materials and supplies, necessary for the construction, maintenance, operation and repair of roads, highways and bridges as heretofore limited, within the limits of its district. They may employ and discharge such laborers, overseers, foremen, employees, or other persons, as they may deem necessary in carrying out the proper performance of their duties under this Act.”

Section 11 provides that the County Treasurer shall pay out money from the Special Road District Funds upon the written warrants of the President of the Board of Directors of the Road District, countersigned and attested by the Secretary thereof, which warrants shall be drawn after verified bills have been regularly allowed at regular monthly meetings.

The foregoing provisions seem to indicate clearly that, within certain limits, the duty is placed on the Board of Directors of a Special Road District to repair and maintain all public highways within such district, and such Board of Directors is granted the power to do all things necessary in order to enable such board to fully perform such duties. For instance, by Section 2 the Board is restricted to the repair and maintenance of bridges under twelve feet in length, all others being repaired and maintained by the board of county commissioners, and such board is also restricted to the maintenance and repair of roads when the cost thereof does not exceed \$300.00 per mile in any one year, the board of county commissioners being required to maintain and repair all roads when the cost exceeds \$300.00 per mile per year, and such board of directors is the, by Section 7 given the power and authority to enter into contracts for the purchase of supplies and materials necessary for the maintenance and repair of roads which it is made the duty of such board to maintain and repair, and to employ the necessary labor, etc., therefor. It would clearly be impossible for a Board of Directors of a Special Road District to perform these duties and exercise these powers if such board was first required to secure the approval of, or an order from the Board of County Commissioners to enter into any contract for the repair or maintenance of a road. If it was necessary to secure such approval or order such powers would not be exercised by the Board of Directors of the Special Road District, but by the Board of County Commissioners. Your first question is therefore answered in the affirmative.

2. Has the Board of Directors of a Special Road District authority to issue warrants in the sum of \$5000.00 or in any amount, for payment of work done in repairing roads within said district when there are no funds to pay said warrants, in the treasury of such road districts?

Chapter 145 Session Laws 1917 nowhere contains any authority for a Board of Directors to create any indebtedness when there are no funds in the treasury to pay the same, but, in fact seems to in-

dicade very clearly that it was the intention that indebtedness should only be incurred when there is money on hand to pay the same.

Section 8 provides for levying taxes against property within a district for road purposes, and the funds derived from such levies are required by Section 10 to be kept in Special Funds which shall be used in the creation, maintenance, operation and repair of public highways and bridges within such districts. Section 12 provides for the payment of a road poll tax by every able bodied man within a special road district, or in lieu thereof such persons may labor on the roads within his district for a specified length of time, the poll tax when paid being deposited in the special road district fund. Section 20 provides a manner in which each road district may acquire funds for the purpose of maintaining and repairing the roads and bridges within the district until such time as a tax, as provided in Section 8, can be levied and collected for such purpose. In the absence of any provision directly authorizing the issuance of, and registration of warrants when there is no money in the special road district fund, and with provision made in Section 20 for the acquisition of funds before the levying and collection of a tax, there seems to be no question but what it was the intention of the legislature that a special road district must pay as it goes, and that it should not be permitted to issue warrants when there is no money in its fund to pay the same. You are, therefore, advised that the Directors of a Special Road District have no power or authority to issue warrants in any amount whatever unless there is sufficient money in its funds to pay the same upon presentation to the county treasurer.

3. Has the County Treasurer any authority to pay warrants, issued under conditions mentioned in questions one and two, out of taxes collected this year by a special five mill levy on the property in a Special Road District, when the warrants were issued during the year 1919?

This question is practically answered by the answer to question two. If the Board of Directors of a Special Road District issued warrants in 1919 when there was no money in its special fund to pay the same, its acts in doing so were illegal, and the warrants issued were void, consequently the county treasurer would have no power or authority to pay the same out of any money thereafter coming into his possession to the credit of such fund from any source.

Respectfully,

S. C. FORD,

Attorney General.