

COUNTY COURT:

ROADS, VACATION OF:

Petition to vacate road must be publicly read on the first day of the regular term of court at which the petition is presented, and must be publicly read again on the first day of the next regular term. Notice of the filing of such petition must be personally served on persons residing in the district whose lands are crossed or touched by the road sought to be vacated in the same manner as other notices are required to be served.

Hon. Edwin F. Brady,
Prosecuting Attorney
Benton County,
Warsaw, Missouri.

April 11, 1951



6-15-51

Dear Sir:

This department is in receipt of your recent request for an official opinion upon the following matter:

"The county court begins its regular terms on the first Mondays of February, May, August and November. They hold adjourned terms beginning on the first Mondays of January, March, April, June, July, September, October and December.

"Section 228.110 provides that the petition to vacate a road shall be publicly read on the first day of the term at which it is presented. Can this be at an adjourned term, or must it be at a regular term? The section then provides that the matter shall be continued until the next term. Can this continuance be to the next adjourned term, or must it be to the next regular term? The section further provides that after notice the petition shall be publicly read again on the first day of the next regular term, which it is presumed means the next regular term and not the next adjourned term.

"This interpretation is requested for the guidance of the county court and in the light of the decisions holding that the public has a vested interest in public highways, which cannot be vacated except as prescribed.

"One other point which may come up is whether persons residing in the district whose lands are crossed or touched by the road must be served personally if they have already signed the petition. It would seem to me that they should be served personally whether they have signed the petition or not."

Hon. Edwin F. Brady,

Your attention is first directed to Section 228.110, RSMo. 1949, which reads as follows:

"1. Any twelve freeholders of the township or townships through which a road runs may make application for the vacation of any such road or part of the same as useless, and the repairing of the same an unreasonable burden upon the district or districts. The petition shall be publicly read on the first day of the term at which it is presented, and the matter continued without further proceedings until the next term.

"2. Notice of the filing of such petition and of the road sought to be vacated shall be posted up in not less than three public places in such township or townships, at least twenty days before the first day of the next term of the court, and a copy of the same shall be personally served on all the persons residing in said district whose lands are crossed or touched by the road proposed to be vacated in the same manner as other notices are required to be served by law; and at the next regular term the same shall again be publicly read on the first day thereof.

"3. If no remonstrances be made thereto in writing, signed by at least twelve freeholders, the court may proceed to vacate such road, or any part thereof, at the cost of the petitioners; but if a remonstrance thereto in writing, signed by at least twelve freeholders, residents of such township or townships, be filed, and the court after considering the same shall decide that it is just to vacate such road, or any part thereof, against the vacation of which the remonstrance was filed, the costs shall be paid by the parties remonstrating, and the original costs and damages for opening such vacated road shall be paid by the petitioners to those who paid the same; provided, that if five years have elapsed since the original opening of the same no such reimbursement shall be made."

You will note in paragraph 1 of this section that it is required that the petition required to be filed "shall be publicly read on the first day of the term at which it is presented.* * *" The term at which the petition is required to be read is on the first day of the regular term. The nature of an adjourned term being but a continuation of the previous or regular term is such that it appears

Hon. Edwin F. Brady.

clear that the first day of the term could only refer to a regular term. In the case of *Harris v. Gest*, 4 Ohio State Reports 473, the court said:

"They (the courts) have an inherent power to adjourn to a more distant day * * *. When this power is exercised, the sitting after the adjournment is a prolongation of the regular term, and, in contemplation of law, there is but one term".

The section quoted above then provides "the matter (shall be) continued without further proceedings until the next term." The section then specifies that notice of the filing of the aforesaid petition be posted at least twenty days before "the first day of the next term of court, * * *" "and at the next regular term the same shall again be publicly read on the first day thereof." You will note that the "term" referred to in paragraph 1 of this section as the term to which the matter shall be continued is the same "term" as referred to in paragraph 2 as the next regular term when the petition shall again be publicly read.

To illustrate the foregoing with an example we may point out that the petition required to be submitted under the section in question could be publicly read on the first Monday in May which is the first day of the regular term. Notices must then be posted at least twenty days before the first Monday in August, and at the next regular term following the May term, which would be the first Monday in August, the petition shall again be publicly read and if no remonstrances be made thereto in writing, signed by at least twelve freeholders, the court may proceed to vacate such road if the court has followed all the other procedure required by the statute.

As intimated in your letter, the terms of the county court are fixed by section 49.170 RSMo 1949, in the following words:

"Four terms of the county court shall be held in each county annually, at the place of holding courts therein, commencing on the first Mondays in February, May, August and November. The county courts may alter the times for holding their stated terms, giving notice thereof in such manner as to them shall seem expedient; provided, that in counties now containing or that may hereafter contain seventy-five thousand or more inhabitants, and where county courts are now or may hereafter be held at more places than one and at other places than the county seat, the terms of said court shall be held monthly and alternately at the county seat and such other place as may be provided for the holding of such court, and each monthly term shall commence on the first Monday in each month."

Hon. Edwin F. Brady.

It is also provided, by section 49.200, that the county court may hold "adjourned terms." Said section reads as follows:

"Each county court may hold adjourned terms whenever it may become necessary for the transaction of its business."

Your next question is: Does the statute require that persons residing in the district whose lands are crossed or touched by the road sought to be vacated be served personally with notice that such petition has been filed if they have signed the petition making application for the vacation of such road?

The statute quoted supra is clear and unambiguous wherein it states:

"Notice of the filing of such petition and of the road sought to be vacated shall be posted up in not less than three public places in such townships * * * and a copy of the same shall be personally served on all the persons residing in said district whose lands are crossed or touched by the road proposed to be vacated in the same manner as other notices are required to be served by law."

I find nothing in the statute which would indicate that notice should not be given to one who has signed the petition simply because he is one of the petitioners. Notice as expressly required by the statute should be served on those persons residing in said districts whose lands are crossed or touched by the road proposed to be vacated.

CONCLUSION.

A petition making application to the county court for the vacation of a road under section 228.110 RSMo 1949, should be publicly read on the first day of the regular term at which it is presented, and the matter continued without further proceedings until the next regular term. At the aforementioned next regular term the said petition shall again be publicly read on the first day thereof.

Notice of filing the petition and the road sought to be vacated shall be personally served on all the persons residing in the district whose lands are crossed or touched by the road proposed to be vacated in the same manner as other notices are required to be served by law.

Respectfully submitted,

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JOHN E. MILLS
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APPROVED:



J. E. TAYLOR
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