

HIGHWAYS:
COUNTIES:
ACQUISITION OF RIGHTS-
OF-WAY:

St. Louis County is not liable for the costs of acquisition of rights-of-way acquired by the State Highway Commission for a road to be built through the aforesaid county, in the absence of a contract so providing.



August 23, 1955

Mr. Herbert C. Funke
St. Louis County Counselor
Law Department
Courthouse
Clayton, Missouri

Dear Sir:

Your recent request for an official opinion reads as follows:

"I am requesting your opinion in the following matter:

"The Missouri State Highway Commission, having the authority to locate Primary Highways, has designated its route TR 40 through the City of Richmond Heights from a point on Hanley Road, near its intersection with Eager Road, and extending Eastwardly through said City to the City limits of St. Louis in the city block between West Park and Wise Avenues. The authorities of the City of Richmond Heights object to said location and refuse to make any contribution toward the acquisition of rights-of-way; and the authorities of St. Louis County have not entered into any contract with the Highway Commission for said road or to make any contribution for acquisition of rights-of-way. According to the 'policy' of the State Highway Commission, local authorities in urban areas are required to furnish one-half the cost of acquisition of these rights-of-way. Highway TR 40 is one of the Federal aid primary routes eligible for improvement with Federal funds to the extent of one half of the cost, and having been so designated, the Highway Commission is obligated under the provisions of Section 226.150, RSMo. 1949, to proceed with the construction.

Mr. Herbert C. Funke

"I therefore request your opinion on the following question:

"If the State Highway Commission goes forward with the acquisition of rights-of-way and construction on the above route, is St. Louis County liable for one-half the cost of acquisition of the rights-of-way and could such cost be recovered from the County through legal action, even though St. Louis County never enters into any contract with the State Highway Commission for the purchase or acquisition of said rights-of-way?"

We observe, first, that if St. Louis County is liable for one-half the cost of acquisition of the rights-of-way referred to above by you, there must be some definite statement in the law in which, under the circumstances set forth by you, St. Louis County would be liable for such costs. We are entirely unable to find, in the law or the cases, where any such liability is imposed upon St. Louis County. Section 227.170, RSMo. 1949 states that a civil subdivision, which Section 226.010 RSMo. 1949 defines a county to be, may "convey right of ways to the State of Missouri." That section reads:

"Any civil subdivision as defined in Section 226.010, RSMo. 1949, shall have the power, right and authority, through its proper officers, to contribute out of funds available for road purposes all or a part of the funds necessary for the purchase of right of ways for state highways, and convey such right of ways or any other land, to the state of Missouri to be placed under the supervision, management and control of the state highway commission for the construction and maintenance thereupon of state highways and bridges. Funds may be raised for the purpose of this section in such manner and such amounts as may be provided by law for other road purposes in such civil subdivision; provided, that there shall not at any time be any refund of any kind or amount to said civil subdivision by the state of Missouri for lands, acquired under this section."

Mr. Herbert C. Funke

The only case which we have been able to find which relates to this matter is that of Reilly v. Sugar Creek Township of Harrison County, 139 S.W. 2d. 525. There, however, the issue was not whether the township, which was a political subdivision, could be forced to pay for the right-of-way but whether it could legally do so out of funds voted by it for the purpose of constructing roads. The court held (l.c. 528):

"We rule that Sugar Creek Township was authorized to pay for the right of way out of the funds voted for the purpose of constructing roads."

CONCLUSION

It is the opinion of this department that St. Louis County is not liable for the costs of acquisition of rights-of-way acquired by the State Highway Commission for a road to be built through the aforesaid county, in the absence of a contract so providing.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Hugh P. Williamson.

Very truly yours,

John M. Dalton
Attorney General

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