

STATE HIGHWAY COMMISSION: Not liable for maintenance of
abandoned roads not part of state
highway system.

August 27, 1938

8-29



Honorable William E. Stewart
Prosecuting Attorney
Knox County
Edina, Missouri

Dear Sir:

This Department is in receipt of your letter of
August 12, 1938, wherein you state as follows:

"The Knox County Court and several
citizens from the town of Baring
have requested me to write you for
an opinion in regard to state highway
No. 15. Highway 15 did run through
the town of Baring but the Highway
Department changed the highway and
it now runs South and West of Baring.
Highway "K" runs through the town
of Baring and Highway 15 connects
with Highway "K" west of Baring. There
is a mile or mile and a half of old
15 that runs from the present highway
15 north and intersects with Highway
"K". That part of old Highway 15 is
in a run down condition now and the
Court and the Baring people want to
know whose place it is to keep this
road in condition? Can the highway
Department be compelled to keep this
road up?"

The facts as set out in your letter are very meager
so we took the liberty of inquiring further from the State
Highway Department, and received the following letter from
Honorable Louis V. Stigall, Chief Counsel of the Department,
the same being dated August 20, 1938:

"In compliance with your request, we are submitting the following facts regarding the location of Route 15, Knox County through Baring.

The statutes designated this route "through" Baring, and the final location as determined by the Commission and as constructed is through Baring or within the corporate limits of this municipality.

Years ago a short section of road was constructed, under state supervision, under the old Morgan-McCullough Law, which was succeeded by the Centennial Law, Article 12, Chapter 42, R.S. Mo. 1929. Under the old law the State had very few funds invested in these Morgan-McCullough projects and in State ex rel. Reynolds County vs. State Highway Commission, 328 Mo. 859, 42 S.W. 193, the Supreme Court held that these old projects would not automatically become parts of the Centennial system.

As in hundreds of other cases in the state, after the enactment of the Centennial Law, the Commission designated and numbered Route 15 through Baring over existing county and city roads. Pending final location and construction of this route by the Commission this temporary route was maintained by the State. When the final location was determined and the route constructed through Baring in compliance with the statute, the old temporary route, in our opinion, reverted to the governmental subdivision which had constructed it and had maintained it prior to the time the Commission took over its maintenance as a temporary state route.

It would be, of course, within the power of the County Highway Commission and the State Highway Commission to agree that the old temporary route through its entire length be included as a supplementary state highway under the 1928 road amendment. Absent such agreement, however, the Commission has no power or authority to maintain the old route as it has not been finally included in the state highway system."

Section 8120 R.S. Missouri 1929, "created and established a state wide connected system of hard surfaced public roads extending into each county of the state, which shall be located, acquired, constructed, reconstructed, and improved and ever after maintained as public roads, and the necessary grading, hard surfacing, bridges and culverts therefor shall be constructed by the state of Missouri." This is known and referred to as the Centennial Law. It was further provided in said section that in Knox County the road was to be "through Baring".

The case of State ex rel. Reynolds County vs. State Highway Commission, 328 Mo. 859, 42 S.W. (2d) 193, was an original proceeding in mandamus in which Reynolds County, as relator, sought to compel the State Highway Commission, as respondent, to refund moneys expended by said county in the construction of certain road and bridge projects therein.

It is pointed out in said case that prior to the adoption of the Centennial Law state road work was done under the Hawes Law and construction continued under the Morgan-McCullough Law (l. c. 194).

After the passage of the Centennial Law the Commission took over and maintained various roads and bridges pending final location. However, as stated by the court (l. c. 195):

"This does not tend to show that these projects have been permanently taken into the state highway system. It does tend to show that they have been temporarily taken over and maintained pending the completion of the state highway system."

We assume that the portion of the road you refer to as being "that part of old Highway 15 is in a run down condition" is one of the short sections of improved road abandoned after the Commission had determined upon the final location of Highway 15, and which is referred to in the Court's opinion as follows (l. c. 195):

"The Chief Engineer advised the Commission that there are a number of short sections of improved road in the state now being maintained which are not on the designated State Highway System. Short stretches of highways which were built under the McCullough-Morgan Law using Federal Aid are now being maintained by the state even though they are not a part of the State System; proper maintenance of Federal Aid sections of road heretofore built is necessary to secure Federal Aid on other new projects. He declared it is not desirable to have a large number of short sections of road to maintain that are not on the state system.

'The Chief Engineer was therefore instructed to advise the respective counties and districts that the state could not longer maintain such sections of road as it was now maintaining the state roads and if the county or district refused to maintain such roads to the satisfaction of the Government, then and then only would the state formally abandon the section of improved road and refund to the Government the money it has invested in said road.'

This order referred only to 'short sections of improved road' not located between or connected with 'control points' designated in the Centennial Law. It also does not tend to show that these projects had been taken into the state highway system.

The opinion will not be lengthened by setting forth these minutes, letters, and resolutions. We have examined them and find no word therein tending to show that these projects have been taken into the state highway system. They do tend to show that when the Centennial Law became effective and the commission organized, maps were made of the numerous projects over the state and a policy announced to maintain these projects pending the completion of the system. In furtherance of this policy, it designated and marked these and other projects as part of the system."

And in concluding that the State Highway Commission would not be authorized to refund to the county moneys expended for abandoned roads the Court said (l. c. 196):

"Respondent is not authorized to refund for abandoned projects or parts thereof. It is only authorized to refund for projects or parts thereof taken into the system. Section 8127, R.S. 1929."

Under Section 8115 R.S. Missouri 1929, the State Highway Commission is only empowered and directed to provide for the maintenance of the state highway system in part as follows:

"The construction and maintenance of said highway system and all work incidental thereto shall be under the

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general supervision and control of the state highway commission, which is hereby authorized, empowered and directed to take whatever steps may be necessary to cause said state highway system to be constructed at the earliest possible time, consistent with good business management and funds available, after this article takes effect, and also to provide for the proper maintenance of said state highway system."

From the foregoing it is the opinion of this Department that the State Highway Commission cannot be compelled to keep up "that part of old Highway 15" which is not a part of the state highway system, and which was abandoned by the Commission pending final location and construction of State Highway 15.

Respectfully submitted,

MAX WASSERMAN,
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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