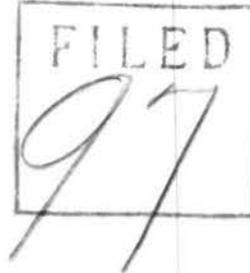


COUNTY COURT: MAY VACATE ADDITIONS IN UNINCORPORATED TOWNS SO THAT ASSESSMENT WILL BE BY ACREAGE RATHER THAN TOWN LOTS.

January 23, 1940.

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Hon. Shelton Williams, County Clerk
Pike County
Bowling Green, Missouri



Dear Sir:

We are in receipt of your request for an opinion under date of November 27, 1939, which reads as follows:

"I would like an opinion as to whether town lots in a nonincorporated town can be assessed, as acreage instead of town lots. This land is not used for anything but pasturage land. The town is almost abandoned. And the lots have no value except as other acreages.

"Can the county court issue an order changing this town lots to acreages?"

Section 7168 R. S. Mo. 1929, provides the procedure for vacating additions:

"If any person shall lay off an addition to any town or city which he does not improve, and shall be the legal owner of all lots contained in such addition, such person, or any other person who shall become the legal owner thereof, shall have such addition or any part thereof vacated by applying to the county court of the proper county, after notice as hereinbefore provided and proof of ownership of such lots, but such act of vacation shall have no force or effect until a certificate thereof be made

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out by the clerk of the said court and filed for record in the recorder's office of said county."

In the case of Spurgeon v. Hennessey 32 Mo. App. 83, l.c. 87, the court had occasion to construe the above section and said:

"We do not think that these section (5047, 5048, R. S. Mo. 1879, now 7165, 7166, R. S. Mo. 1929) apply to the case at bar; for here, it is not a "street" or an "alley" that is sought to be vacated but part of an entire addition, including, perhaps, many streets, alleys and public squares. It follows, then that this proceeding must be governed by Section 5050, and must stand or fall by a fair construction of that statute. This statute was intended to meet just such a case as the one before us, and we do not see that its validity is impaired by reason of the fact that there are several owners of the addition sought to be vacated. The statute does say. "If any person shall lay off an addition * * * and shall be the legal owner of all lots," but does it follow that two or more persons may not lay off an addition to a town, and afterwards seek to have the same vacated? Or that a number of persons who are owners of various lots may not join in the same petition for the same end and purpose? Here these petitioners are the legal owners of the lots sought to be vacated. Shall we say to them that, forwooth, as there is more than one owner, the statute does not apply? We are not willing to place any such narrow construction upon the laws of this state. It will be observed that this section, unlike section 5048, makes no provision for a remonstrance, and for reasons which readily suggest them-

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selves; nor for a continuance until the next term of the court. It provides for notice and proof of ownership of the lots, giving the county court jurisdiction to hear and determine the matter. The judgment vacating the addition was made at the February term of the court, after due notice and proof of the same, and we see no good reason why the jurisdiction of the court should be questioned."

Under Section 7168, supra, it would not be necessary for one person, to own all the town lots sought to be vacated. It is sufficient that the petitioners be the legal owners of the lots sought to be vacated.

The court in the case of State v. Kennedy 207 S. W. (Mo. App.) 71, after discussing the applicability of Section 9258 (now Section 7168, supra,) points out that after vacation the proper legal description of the property comes back:

"It is true, in a sense, that the identity of "block 21" was not destroyed by the vacation, but the legality of that description of the property was destroyed. The ground itself, of course, remained, and no doubt a surveyor could, by referring to the record of the vacated plat, have located its boundaries; but so, also, could he have determined the lines of the land by its proper legal description, which came back into effect when the vacation was made, and, since it was in this status at the time the assessments were made, they should have been made by the proper and valid description then existing."

From the foregoing we are of the opinion that the county court may vacate part of or the entire addition in

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unincorporated towns so that the assessment will be by acreage rather than town lots provided the procedure outlined in Section 7168 H. S. Mo. 1929, is complied with.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

W. J. BURKE
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MW/mc