

HIGHWAYS:

- (1) State or County does not hold fee simple title to lands conveyed for highway purposes.
- (2) Abandoned highways revert to abutting landowners.

July 9, 1942

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Hon. Arthus U. Goodman, Jr.
Prosecuting Attorney
Kennett, Missouri

Dear Mr. Goodman:

This is to acknowledge receipt of your letter of July 4, in which you request the opinion of this department. Your letter is as follows:

"As you may know, the United States Government is now making preparations to take over approximately 3200 acres of land in this county for the purpose of establishing a basic air training school, together with a few other tracts to be used as auxiliary landing fields. It will also be necessary for them to acquire title to certain roads in order that the field may not be crossed by roads or travel.

"The U. S. Engineers have requested that I obtain from you an official opinion relative to the title to the real estate now used as a road. Does the State, or the County, as the case may be, hold fee simple title to this land? Will it revert to the adjoining landowners if and when it ceases to be used for a road? In short, exactly how is the title held?

"They state that it is the practice of the Government to obtain such an opinion in each state where a project of this kind is undertaken. I enclose copies of right of way deeds procured from Messrs. Sayre, Berry and Smith, which I am informed represent all the types of conveyances covering the roads in question."

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Attached to your letter of request are three specimen right of way deeds which you state represent all the types of conveyances covering the roads in question. You submit two questions for us to answer. Your first question is: Does the State, or the county, as the case may be, hold fee simple title to this land?

It will be noted that each of the three deeds submitted by you are designated as right of way deeds, and was executed for a consideration of one dollar. Two of the deeds convey the right of way to the County of Dunklin and the other conveys the right of way to the State of Missouri. Each of these definitely say that the lands therein described are conveyed for the purpose of establishing and maintaining a public road or highway.

The general rule with reference to deeds of this kind which convey land for highway purposes is that the grantor does not part with the fee simple title to the land conveyed, but only conveys an easement or right of way over the land. The rule is stated succinctly in 25 Am. Jur., Sec. 132, as follows:

"In the absence of a statute expressly providing for the acquisition of the fee, or of a deed from the owner expressly conveying the fee, when a highway is established by dedication or prescription, or by the direct action of the public authorities, the public acquires merely an easement of passage, the fee title remaining in the landowner." (underscoring ours)

This general rule is sustained by many Missouri cases, among them being the case of Neil v. Independent Realty Company, 317 Mo. 1235, 298 S. W. 363, 1. c. 367, wherein the court said:

"The right acquired by the public in respect of land devoted to highway purposes is ordinarily a mere easement of passage over it, with the powers and privileges incident thereto, the fee title remaining as it was before the highway was established."

Also, in the case of Cartwright v. Liberty Telephone Company, 205 Mo. 1. c. 133, in discussing the same question, the court said:

"According to the laws of this State, the property owners in cities, towns and villages own the land to the center of the adjoining street, subject to the easement of the city. It has the right to subject the street to any and all of the uses or purposes for which the street was acquired; but until it does so subject it to one or more of those uses, or so long as he and the city can jointly occupy and use the street without doing 'violence to the full, free and complete exercise of the public easement,' he is to that extent just as much the owner of the property to the center of the street as he is of the remainder of the lot, and has the same right to use it in any manner for any purpose he may see proper, not inconsistent with the rights of the public."

In the case of Ashurst v. Lohoefer, 170 Mo. App. 1. c. 331, the court said:

"In this State the fee of land over which a highway or street is laid out remains in the owner with an easement to the public. He remains the owner of the product of the land on, under or above the surface, the taking of which would not injure the construction or the public use. (Gamble v. Pettijohn, 116 Mo. 375; Gans & Sons v. Railway Co., 113 Mo. 308; Snoddy v. Bolen, 122 Mo. 479; Walker v. Sedalia, 74 Mo. App. 70; McAntire v. Telephone Co., 75 Mo. App. 535; Pemberton v. Dooley, 43 Mo. App. 1. c. 178; Belcher Sugar Co. v. Elevator Co., 82 Mo. 1. c. 125; Thomas v. Hunt, 134 Mo. 392.)"

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Sustaining the same view is the case of Houch v. Little Run Drainage District, 119 S. W. (2d) 826, wherein the Supreme Court held that where a road was built across a strip of land, there was a reversionary interest in such land upon cessation of public use. From the above it is our opinion that the grantors in the deeds attached to your letter of request did not convey the fee simple title to the lands described therein, and, from the foregoing, it is our further opinion that the conveyances were for right of way purposes and that the public only has an easement of passage therein.

Coming now to your second question, which is: Will the land revert to the adjoining land owners if and when it ceases to be a road?

Since we have answered your first question that the grantors therein did not convey a fee simple title to the land described in such conveyance and that the public only had an easement of passage therein, it is obvious that "upon the vacation or discontinuance of the highway as such restores exclusive possession thereof to such owner or to his successors or his assigns, dependent, in the even of a conveyance upon the effect thereof as carrying title to the portion of the highway in question."

Of course the question may arise after the abandonment or vacation of the public highway and that portion used as roadway reverts to the abutting landowners, whether it reverts to the present owners of the adjoining land or to the owners of the land at the time the right of way deeds were made. This of course depends upon the description in the subsequent deed or deeds, if any, whether the description was up to the boundary of the road or to the center of the highway. The presumption is that the owners intended to convey to the center as the dividing line.

CONCLUSION

It is, therefore, our opinion that (1) the State or County, as the case may be, does not hold the fee simple

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title to the land described in the deeds attached to your letter of request, and (2) that the land described therein reverts to the abutting landowners.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

VANE C. THURLO
(Acting) Attorney General

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