

STATE HIGHWAY COMMISSION: Powers and duties of respective bodies  
COUNTY HIGHWAY COMMISSION: distinguished.



July 7, 1953

Honorable R. M. Gifford  
Prosecuting Attorney  
Sullivan County  
Milan, Missouri

Dear Sir:

Reference is made to your request for an official opinion of this department reading as follows:

"A question has been proposed to this office with reference to the relative positions of the County Court and the County Highway Commission of Sullivan County, Missouri and the State Highway Commission of Missouri with reference to the powers and authority conferred by statute thereupon regarding the location and establishment of proposed county highways. Section 230.030, RSMo 1949, with reference to the power and duties of the County Highway Commission says, 'that said commission shall have the power to locate, lay out, designate, construct and maintain, subject to approval of the State Highway Commission, a system of county highways . . . '

"The particular question submitted is a determination of the validity of the setting up of a proposed road in this county by the State Highway Commission under circumstances that would indicate objection and disapproval by the County Highway Commission and the County Court. If the power to so designate such roads is within the County Highway Commission but subject to the approval of the State Highway Commission does it not necessarily

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follow that the setting up of a particular road presupposes an agreement between the two Commissions.

"Assuming the necessity of the consent and agreement of the County Commission to set up a particular road and further assuming the designation of such road arbitrarily by the State Commission and over the objection of the county body what remedy, if any, has the County Highway Commission?"

The Missouri State Highway Commission is a constitutional body existing by virtue of the provisions of Sections 29 to 34, inclusive, Article IV of the Constitution of 1945, and prior constitutional provisions. Section 29 reads as follows:

"The department of highways shall be in charge of a highway commission. The number, qualifications, compensation and terms of the members of the commission shall be fixed by law, and not more than one-half of its members shall be of the same political party. The selection and removal of all employees shall be without regard to political affiliation. It shall have authority over and power to locate, relocate, design and maintain all state highways; and authority to construct and reconstruct state highways, subject to limitations and conditions imposed by law as to the manner and means of exercising such authority; and authority to limit access to, from and across state highways where the public interest and safety may require, subject to such limitations and conditions as may be imposed by law."

Also, the following portion of subsection (3) (a) of Section 30:

"(3) In the discretion of the commission to locate, re-locate, establish, acquire, construct and maintain the following:

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"(a) supplementary state highways and bridges in each county of the state as hereinafter provided; \* \* \*"

Section 32 relates to the apportionment of funds for supplementary highways, and after setting up the formula by which such allocation is to be made, contains the following provision:

"\* \* \* Supplementary state highways shall be selected by mutual agreement of the commission and the local officials having charge of or jurisdiction over roads in the territory through which such supplementary state highways are to be constructed."

From the foregoing it appears that the constitutional provisions, together with statutory enactments related thereto, which are found in Chapter 226, RSMo 1949, evidence an intent on the part of the people of Missouri that jurisdiction over "state highways" be delegated to the Missouri State Highway Commission. The delegation of power has been accompanied by the qualification with respect to "supplementary state highways" appearing as part of Section 32, Article IV, Constitution of 1945, quoted supra.

We next direct your attention to the provisions of Chapter 230, RSMo 1949, which relate to "county highways." With respect to such highways, it appears that it is the intention of the people of Missouri that jurisdiction thereof be retained at the local level and exercised by a body known as the "County Highway Commission." The powers and duties of such body have been declared in Section 230.030, RSMo 1949, which reads as follows:

"230.030. It shall be the duty of the county highway commission and said commission shall have the power to locate, lay out, designate, construct and maintain, subject to approval of the state highway commission, a system of county highways not exceeding in the aggregate at any given time one hundred miles in any county, by connecting by the most practical route the several centers of population in the county, in such manner as to afford

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a connection with such of said centers of population as are not now located on any state highway with such state highway, and so as to afford, as nearly as may be done, a connection with county highways connecting the centers of population of adjoining counties, to the end that all parts of the county shall be connected with the state highway system as now laid out and designated, and that the inhabitants of the county generally shall have and enjoy a system of highly improved farm-to-market roads. If any part of this county one hundred mile highway system has been, or shall hereafter be taken over by the state highway commission and become a state highway, then an equal amount of new mileage, to take the place thereof, may be placed in the county one hundred mile system."

A further limitation other than the approval of the State Highway Commission, which is expressed in the section quoted, appears in Section 230.040, RSMo 1949, which imposes the duty upon the County Highway Commission to obtain the further approval of the State Highway Commission of the proposed location of any "county highway." After such county highways have been approved and constructed, the County Highway Commission exercises complete jurisdiction thereover, as appears from the provisions of Section 230.070, RSMo 1949, which reads as follows:

"230.070. The county highway commission shall have absolute jurisdiction and control over all highways constituting a part of the county highway system, and shall hold title in fee to the right of way thereof, and no other officer, board or commission, except as in this chapter specifically provided, shall have or exercise any authority or jurisdiction over any of such highways. The roads constituting the county highway system shall be known and designated as 'county highways.'"

The integration of "county highways" into the "state highway system" is provided for by Section 230.110, RSMo 1949, which reads as follows:

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"230.110. If, and when, the state highway commission is authorized by law so to do, and may so desire it may take over all or any part of the highways of the county highway system and make refund therefor in such manner as may now or hereafter be provided by law for making refund to the several counties of this state, and road districts thereof, for highways heretofore designated and taken over by said state highway department, whereupon it shall be the duty of the county highway commission, by proper deed of conveyance, to transfer to state highway department that part of county highway system so taken over."

Applying the foregoing constitutional and statutory provisions to the problem which you have submitted, it appears that if the proposed road is a "county highway", as you have referred to it in your letter of inquiry, then the power to locate, designate, construct and maintain such road as a part of the "county highway system" has been, and is, vested in the County Highway Commission, subject, however, to the approval of the State Highway Commission. Of course, such power to approve or disapprove may not be exercised in an arbitrary or capricious manner, and inasmuch as this phase proposes a factual matter, we do not undertake to render any opinion thereon.

If, on the contrary, the proposed new road is in fact a "state highway" within the statutory meaning of that term, and not a "supplementary state highway," then the complete power with respect to its location, construction and maintenance is vested in the State Highway Commission, independent of any approval or disapproval on the part of local officials.

However, a third possibility suggests itself. If the proposed new road is in fact a "supplementary state highway" which upon completion will become a part of the "state highway system," then its selection must be based upon a mutual agreement of the State Highway Commission and the local officials having jurisdiction over roads in the territory to which such supplementary state highway is to be constructed. This is the plain meaning of the quoted portion of Section 32, Article IV, Constitution of 1945, quoted supra.

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It does not appear that any statutory remedy has been afforded the body designated as the "County Highway Commission" with respect to enforcing by legal action any failure on the part of the State Highway Commission to obtain the agreement of such "County Highway Commission" before the construction of a "supplementary state highway." In such an instance, it seems that the remedy, if any, would inure to the benefit of owners of land through which such proposed new road might be located. However, it is our opinion that the County Highway Commission could through legal action obtain approval of the State Highway Commission to a proposed "county highway" in the event such approval be withheld arbitrarily or capriciously.

CONCLUSION.

In the premises, we are of the opinion:

1. That if a proposed new road located within a county is a "county highway," then the exclusive jurisdiction over the location, construction and maintenance of such road is vested in the "County Highway Commission" subject to the approval of the State Highway Commission;
2. That if such proposed new road is a "state highway", of the primary type, then the exclusive jurisdiction with respect to its location, construction and maintenance is vested in the State Highway Commission; and
3. That if such proposed new road is in fact a "supplementary state highway" which upon completion will form a part of the "state highway system" its selection must be by mutual agreement of the State Highway Commission and the local officials having jurisdiction over roads in the territory through which such proposed new road is to be located.

We are further of the opinion that statutory authority has not been granted to the County Highway Commission to restrain or enjoin the State Highway Commission from the construction of a "supplementary state highway" in such county, even absent the approval of such County Highway Commission, and that the remedy, if any, must of necessity be taken advantage of by the owners of land through which such proposed road is located.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Will F. Berry, Jr.

Yours very truly,

JOHN M. DALTON  
Attorney General

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