

COUNTY COURTS: The County Court of Holt County, Missouri  
ROADS AND STREETS: has the authority to spend county money  
for a right of way inside the city limits  
of Mound City for a road to be taken over  
by the state.

January 5, 1955

Honorable Clayton Allen  
Senator, 17th District  
Rock Port, Missouri



Dear Senator Allen:

Your recent request for an official opinion reads as follows:

"I wish you would please give me your opinion, as to whether or not the County Court of Holt County, Missouri has the right to spend County money for a right of way inside the city limit of Mound City for a road, to be taken over by the State. The County Court of Holt County has requested me to secure this opinion from you."

On April 9, 1949, this department rendered an opinion, a copy of which is enclosed, to Honorable E. Wayne Collinson, prosecuting attorney of Greene County, in which we held that "money derived from road and bridge tax on property not in special road district plus one-fifth derived from property in special road district may be spent by county court in improving or repairing streets in incorporated city in county if said street forms a part of the continuous highway of said county leading through such city."

You will note that the above opinion holds that under the circumstances set forth in the opinion money in the amount set forth in the opinion may be spent in "improving or repairing" the streets of a city when such streets form a part of a continuous highway of such county. Your question, however, is whether a county court may spend money within a city in the county for a "right of way" when such "right of way" will form part of a continuous road system of the county when such road is to be taken over by the state.

Hon. Clayton Allen

In this regard we direct your attention to Section 227.170, RSMo 1949, which reads as follows:

"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 subdivisions; 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."

Said Section 227.170, RSMo 1949, was Section 8779, RSMo 1939, and was also Section 8131, RSMo 1929.

The term "through its proper officers" as used in Section 227.170, supra, would, in this regard, mean the county court.

We also call attention to Subsection (1) of Section 226.010, RSMo. 1949, which reads:

"(1) 'Civil subdivision,' a county, township, road district or other political subdivision of the state or quasi public corporation having legal jurisdiction of the construction and maintenance of public road;"

We now see that Section 227.170, supra, in the light of subsection (1) of Section 226.010, supra, and our understanding of the term "through its proper officers," means that counties (being a civil subdivision) have the authority through its county court 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 \* \* \* to the State of Missouri \* \* \* \*."

Hon. Clayton Allen

This section 227.170, supra, was (when it was Section 8131) construed by the Missouri Supreme Court in the case of Reilly v. Sugar Creek Township of Harrison County, 139 S.W. 2d. 525. We believe that the above case is in point here and that the principles laid down and the decision announced in it were based upon conditions so nearly similar to those in the instant case that it will be decisive here. In that case the court discussed the law and facts which constituted the background of the enactment of certain provisions respecting the establishment and maintenance of county and state highways including a constitutional amendment which was adopted in 1928, whereby the sum of 75 million dollars in bonds was voted for road purposes. That was a case where a township had voted bonds for the purpose of paying for the right of way of highways in a certain township as expressed in said Section 8131, RSMo. 1929. As against all objections raised to the right of the township to vote the bonds from which to realize funds for such purpose, and the further objection that the payment of damages under condemnation proceedings in obtaining the right of way was not authorized to be paid out of said funds derived from such bonds, the court held that the township did have such rights as a civil subdivision. The court quoted verbatim, in its discussion of the case, said Section 8131, and after discussing the various amendments made to the statutes succeeding such amendment to the Constitution in voting such bonds in 1928, the court, in approving the use of such funds to purchase rights of way, which the court said were available for road purposes and were the property of the township as a civil subdivision, and could be contributed, at l. c. 527, said:

"\* \* \* This amendment expressly authorized the construction of supplementary state highways in each county of the state in addition to the state highways designated in the act of 1921. See section 44a, article 4, Missouri Constitution, Mo. St. Ann.; State ex rel. Huff, supra. After the above amendment to the constitution, the legislature enacted section 8131, supra. See laws of 1929, page 226. By the constitutional amendment the state highway commission was granted a voice in the location of the roads and was given the power to '\* \* \* determine the width of right of way and surface, and the type and character of construction, improvement, and maintenance.' The purpose of these provisions in the constitution was not only to establish a uniform system as to width,

Hon. Clayton Allen

etc. but also to insure continuous roads from one county to another. These supplementary roads are therefore under the supervision of the highway department and are termed state highways. In this undertaking the state lifted a heavy burden from the local communities, such as counties, townships and road districts. It is evident, however, that neither the act of 1921, or the constitutional amendment of 1928, restricted the authority of the state subdivisions to raise funds for road purposes. On the contrary the legislature in 1929, by the enactment of section 8131, supra, expressly authorized the local subdivisions to pay for rights of way. This, not without good reason, because these supplementary roads are primarily for local use. The local communities were given a voice in the location of these roads. As noted above, the act of 1927 authorized the construction of 'farm-to-market roads.' The 'farm-to-market roads' mentioned in that act are, as a matter of fact, now being built as supplementary state highways under the constitutional amendment of 1928."

Section 230.110 as well as said Section 227.170, RSMo 1949, provides that the State Highway Commission is authorized by law, when it so desires, to take over all or any part of the county highway system and the county highway commission is authorized by proper deed of conveyance to transfer to the State Highway Department that part of the county highway system so taken over.

Said Section 8131, RSMo 1929, was amended by Section 227.170, RSMo 1949, by changing the word "chapter" to "section." Otherwise it is the same as Section 8131, supra.

#### Conclusion

It is the opinion of this department that the county court of Holt County has the authority to spend county money for a right of way inside the city limits of Mound City on a street which forms a part of a continuous county highway of said county, for a road to be taken over by the state.

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

Yours very truly,

John M. Dalton  
Attorney General

HPW:mw

Enc. 4/9/49 to E. Wayne Collinson