

PUBLIC ROADS
COUNTY COURT
ADMINISTRATIVE LAW
APPEALS

In proceeding before county court on petition to establish or vacate public road, county court required to cause stenographic record to be made of proceeding only on request and at expense of petitioner or remonstrator. Appeal from decisions of county court and scope of review governed by Sec. 22, Art. V, Const. Mo. 1945.



March 26, 1954

Mr. Harold S. Hutchison
Prosecuting Attorney
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Vienna, Missouri

Dear Mr. Hutchison:

I have your request for an opinion as to the liability of the County Court of Maries County for keeping a stenographic record in a petition to vacate a road, said request, in part, reading as follows:

"A petition was presented, together with proof of notice to vacate a road in Maries County. Remonstrance was filed and the case came on for hearing before the Court. The Court by its order vacated the road and thereupon the remonstrators filed a petition for judicial review. Neither the petitioner nor the remonstrators having requested a stenographic record to be made at the proceedings before the County Court.

"The opinion requested is whether or not section 228.120 R. S. Mo. 1949 is the controlling statute in this case, or whether or not as has been contended that the County Court would be obligated under Chapter 536 R. S. Mo. 1949 to conform to the procedure of other administrative agencies and 'unless agreed by all parties, each agency shall cause all proceedings and hearings before it in contested cases to be taken down stenographically by a competent stenographer.'"

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The section of the Statutes which you have quoted in Paragraph 2 of your letter, dealing with administrative procedure and review, is Paragraph 2 of Section 536.060, passed in 1945. The other section of the Statutes to which you make reference is Paragraph 1 of Section 228.120, passed in 1949, which reads as follows:

"1. Upon the request and at the expense of any petitioners or remonstrators, a stenographic record shall be made of all proceedings before the county court upon any petition to establish or vacate any public road."

In order to make Section 228.120 effective here, it must be assumed that the proceeding is one to vacate a public road.

It will be observed that Paragraph 1 of Section 228.120 deals specifically with the subject of a stenographic record in a petition before the county court to vacate a public road, and was passed subsequent to Paragraph 2 of Section 536.060, which deals generally with the procedure of agencies as pertains to administrative procedure and review. When dealing with statutes which may appear to be in conflict, the courts follow certain recognized rules. The case of State v. Davis, 284 S.W. 464, 470, quoting from 36 Cyc. 1147, states that the following is the rule in Missouri:

"Statutes in pari materia are those which relate to the same person or thing, or to the same class of persons or things So far as reasonably possible the statutes, although seemingly in conflict with each other, should be harmonized and force and effect given to each, as it will not be presumed that the Legislature, in the enactment of a subsequent statute, intended to repeal an earlier one, unless it has done so in express terms; nor will it be presumed that the Legislature intended to leave on the statute books two contradictory enactments."

Again in Gilkeson v. Railroad, 222 Mo. 173, 204, the general rule is stated to be:

"* * * Where there are two statutes and the provisions of one apply specially to a particular subject, which clearly includes the

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matter in question, and the other general in its terms, and such that if standing alone it would include the same matter, and thus conflict with each other, then the former act must be taken as constituting an exception, if not a repeal of the latter or general statute, and especially is this true where the special statute was enacted subsequent to the passage of the general. * * *

Eagleton v. Murphy, 156 S.W. (2d) 683, 685, states:

"* * * Under the established rules of statutory construction where there are two laws relating to the same subject they must be read together and the provisions of the one having a special application to a particular subject will be deemed to be a qualification of, or an exception to, the other act general in its terms."

Hannibal Trust Co. v. Elzea et al., 286 S.W. 371, 378, says:

"It is an established principle that all statutes are presumed to be enacted by the Legislature with full knowledge of the existing condition of the law and with reference to it. They are therefore to be construed as a part of a general and uniform system of jurisprudence, and their meaning and effect is to be determined in connection, not only with the common law and the Constitution, but also in connection with other statutes on the same subject, and even where two statutes are in apparent conflict, they should be so construed, if reasonably possible, as to allow both to stand and to give force and effect to each."

Applying these rules of construction as herein set out, it would appear that Paragraph 1 of Section 228.120, applying specifically to a particular subject and being a later enactment, should be given effect, it being possible to harmonize the statutes by construing this paragraph as an exception to the general provision of Paragraph 2, Section 536.060, dealing with the procedure and review of administrative agencies generally. Thus, the answer to

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your question #2, asking, "In intermingling Section 228.120 and Sections of Chapter 536 R.S. Mo., 1949, can the County Court be forced to take stenographic record of their proceedings in the contested case under the rules?", would appear to be "no" in the absence of a specific request by, and at the expense of, a petitioner or remonstrator.

Section 478.070, R. S. Mo., 1949, provides that the circuit court shall have appellate jurisdiction from the judgment and orders of county courts - this has been a provision of the statutes long before the adoption of the new Constitution. Section 512.110 provides that ". . . the appellant shall cause the transcript on appeal . . . to be prepared and filed with the clerk of the proper appellate court" Chapter 536, R. S. Mo., 1949, dealing with administrative procedure and review, is taken from Laws 1945, after the 1945 Constitution was adopted. Section 536.100 thereof, provides that "Any person who has exhausted all administrative remedies provided by law and who is aggrieved by a final decision in a contested case, whether such decision is affirmative or negative in form, shall be entitled to judicial review thereof, as provided in Section 536.100 to 536.140, unless some other provision for judicial review is provided by statute;" Paragraph 2 of Section 228.120, passed in 1949, reads: "Any order of the county court establishing or vacating a public road shall be subject to judicial review to the same extent and in the manner prescribed by chapter 536, R. S. Mo. 1949." And Section 536.110 provides: "1. Proceedings for review may be instituted by filing a petition in the circuit court or court of common pleas of the county of the plaintiff's residence within thirty days after the mailing or delivery of the notice of the agency's final decision." Thus, under either procedure, your question #1, "Under the above circumstances does Section 228.120 make it incumbent upon the party asking redress to submit the records to the circuit court?", should be answered in the affirmative. And, although the determination of the applicable procedure sections are not involved in the opinion request, this office herewith indicates that Chapter 536 should be followed in securing judicial review rather than referring to Section 512.110 et seq., since the Legislature in Section 228.120, a more recent statute, through use of the words "to the same extent and in the manner prescribed by Chapter 536" would seem to have evidenced their intention to specifically follow the procedure as therein set out in this instance and not be controlled by the exclusion in that chapter as set out in Section 536.100.

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Your third and final question asks: "In view of the decision in the Kansas City v. Rooney is there any distinction between an appeal from the County Court and a petition for judicial review? And if there is a distinction, how is the County Court going to determine at the time they have their hearing as to what the losing party contemplates as to the keeping of the record?" The procedure to be followed and the scope of review on an appeal from the judgment and orders of the county court prior to the Missouri Constitution of 1945 is provided by Section 49.230, which provides that ". . . when any case shall be removed into a court of appellate jurisdiction by appeal from a county court, such appellate court shall thereupon be possessed of such cause, and shall proceed to hear and determine the same anew, and in the same manner as if such cause had originated in such appellate court" But the case of Kansas City v. Rooney, Judge, 254 S.W. (2d), 626, 627, states as follows: "However, the 1945 Constitution has taken all judicial power from the county court so that it is no longer a judicial court but has become an administrative body. Section 22 of Article V of the Constitution authorizes appeals from decisions of administrative bodies and provides the scope of review. Wood vs. Wagner Electric Corporation, 355 Mo. 670, 197 S. W. (2d), 647, 649. Therefore, the scope of review on any appeal from the county court is that provided by Section 22, Article V. . . .", namely: "'such review shall include the determination * * * whether the same are supported by competent and substantial evidence upon the whole record.'" Thus, it will be seen that the court therein employed the terms appeal and review to describe the method used for appeals from administrative bodies and the scope of review thereof, as provided by Section 22, Article V of the new Constitution. Hence, whatever term is used, the procedure followed is that outlined by Constitution Article V, Section 22. The keeping of the record in this instance must be as is provided in the answer to question #2.

CONCLUSION

It is the opinion of this office that in a proceeding before the county court on any petition to establish or vacate any public road, the county court shall be required to cause a stenographic record to be made of all proceedings only upon the request and at the expense of any petitioner or remonstrator; that the appeal from decisions of the county court and the scope of review thereof is that provided by Section 22, Article V, of the Constitution of Missouri.

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The foregoing opinion, which I hereby approve, was prepared by my assistant, J. Robert Tull.

Yours very truly,

John M. Dalton
Attorney General