

COUNTY HIGHWAYS: The county court of Marion County, Missouri, may
CITIES: legally authorize expenditures and expend county funds,
COUNTY COURTS: within certain defined limits, for the purpose of construction, repair, improvement and upkeep of the streets of an incorporated municipality within the county boundaries, when such street forms part of a continuous highway of said county leading through the city or village; that a street, to form a part of a continuous highway of the county, must be a connecting link between two portions of a highway, which together form an uninterrupted line of traffic; that it is necessary that such street be a continuation of a county highway, and that it extend through and beyond the aforesaid city or village; that if a highway end at the city limits of a city or village, or if the city limit is the Mississippi River, a state line or a county line, money cannot be spent as aforesaid on the improvement of the aforesaid city street.



January 10, 1955

Honorable Harry J. Mitchell
Prosecuting Attorney
Marion County
Palmyra, Missouri

Dear Sir:

Your recent request for an official opinion reads as follows:

"The County Court of Marion County, Missouri desires your opinion in regard to the legal questions hereinafter set forth. Would you please inform me as to your opinion in this matter, and I will pass the information on to the County Court.

"QUESTION: Can the County Court of Marion County, Missouri, legally authorize expenditures and expend County funds for the purpose of construction, repair, improvement, and upkeep of the streets of an incorporated municipality within the County boundaries?

"(a) When the street forms part of a continuous highway of said County, leading through the City or Village?

"(b) When the street does not form a part of a continuous highway of said County leading through the City or Village?

"If your opinion as to the above leaves the following questions relevant, would you also please answer them?

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"QUESTION: What is a street which forms a part of a continuous highway of the County? Is it necessary that the street be a continuation of a County Highway at the entrance to the City Limits, extend through the City and exit as a continuation of a County Highway? How does the fact that the City Limit is the Mississippi River, a State line, or a County line, affect your answer to the last question, if that answer is yes?

"For your convenience, I will give you the following citations which I found by a hurried and not thorough research. Article X, Section 12 (a) Constitution of the State of Missouri, 1945; Missouri Revised Statutes 1949, Section 137.555; Missouri Digest, Counties Key Number 153 $\frac{1}{2}$; the State ex rel. Town of Kirkwood v. County Court of St. Louis County, 142, Missouri 575, 44 S. W. 734; Constitution of Missouri 1945, Article III, Section 38 (a); Constitution of Missouri 1945 Article VI Section 23; Constitution of Missouri 1945 Article VI Section 25.

"It seems to me that since the Constitution of 1945, the case of the town of Kirkwood, *infra*, is no longer authority."

In regard to your first question, I call your attention to an opinion, a copy of which is enclosed, rendered by this department on April 9, 1949, to Honorable E. Wayne Collinson, Prosecuting Attorney of Greene County. This opinion, I believe, fully answers your first question, to the effect that a county court may expend funds in the amount, and from the source, set forth in the opinion, on the upkeep and improvement of a city street when such street forms a part of a continuous highway of such county leading through the city or village.

In answer to your second question we again refer you to the Collinson opinion. It is based upon Section 8527, Laws Mo. 1945, p. 1478, now Sec. 137.555 RSMo 1949, which section is quoted on page 2 of the aforesaid opinion. That section states that there may be such expenditures "if said street shall form a part of a continuous highway of said county leading through such city or village."

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The above words are adopted as part of the conclusion in the Collinson opinion.

It would appear that the above language is perfectly plain and clear. We note that the word "continuous" when used as legal phraseology has no different meaning than when commonly used.

In the case of *Hose v. Sanford*, 101 Fed. (2d) 290, the word is defined as "without break, cessation or interruption."

In the case of *Talbot v. Acheson*, 110 Fed. Supp. 182, the word "continuous" is defined as meaning "connected, extended or prolonged without separation or without interruption of sequence * * *."

Many other definitions of this word could be given, but all are of the same import, and it appears to be unnecessary to do so.

As we stated before, the statute (Section 8527, Laws Mo. 1945, p. 1478, Section 137.555 RSMo 1949) states that "* * * a part of a continuous highway of said county leading through such city or village * * *." The word "through" does not mean "to" or "into" a city or village. If a city limit is the Mississippi River (as is the case of Hannibal, Missouri) it is also, of course, a state line so far as cities bordering on the Mississippi River are concerned.

Clearly, no money could be spent by a county in another state, even though a river were not the dividing line. We feel that the same would be true if the city limit were a county line. It seems to us that the legislature used the word "through" with the consideration in mind of such a situation as you present to us. The primary purpose of the legislature, we believe, was to establish a county road system, not to develop a city street for the benefit of the city. Therefore, when a city street is not a part of a county road, as it would not be when the road did not go on "through" the city, the legislative purpose would cease to exist.

We do not believe that the case of *Town of Kirkwood v. County Court of St. Louis County*, cited by you, is applicable in the instant situation.

CONCLUSION

It is the opinion of this department that the County Court of Marion County, Missouri, may legally authorize expenditures and expend county funds, within certain defined limits, for the purpose

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of construction, repair, improvement and upkeep of the streets of an incorporated municipality within the county boundaries, when such street forms part of a continuous highway of said county leading through the city or village; that a street, to form a part of a continuous highway of the county, must be a connecting link between two portions of a highway which together form an uninterrupted line of travel; that it is necessary that such street be a continuation of a county highway and that it extend through and beyond the aforesaid city or village; that if a highway ends at the city limits of a city or village, or if the city limit is the Mississippi River and a state line or a county line, that money cannot be spent as aforesaid on the improvement of the aforesaid city street.

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

Very truly yours,

JOHN M. DALTON
Attorney General

HPW:ld:da

Enclosure
4-9-49 to E. Wayne Collinson