

IN RE: Power of State Highway Commission to change
route of Farm-to-market road after same
located by County Highway Commission. ✓

7858-59-60 R.S. Mo 1929

March 8, 1933.



Hon. T.J. Harper,
Prosecuting Attorney,
Galena, Missouri.

Dear Sir:

Your letter states as follows:

"The Stone County Hiway Commission is in doubt as to their powers in laying out and establishing "Farm to market highways from point to point and have it approved.

We would like to have an opinion from your office as to their authority in such matters. They have agreed on a location of a road, and the State Highway Commission comes and changes every thing and map out a different route. Do they have any right to pass on and determine the route or is it left to the State Commission?"

The language of your letter leaves me in doubt as to whether you inquire if County Commission designates a road to be built from Galena to Reed Springs, must the designation thereof be approved by the State Commission before the road can be built - or - whether you inquire if County Commission locates a route for a road to be built between Galena and Reed Springs, can the State Commission locate another route and refuse to approve the route selected by the County Commission. I will therefore answer both questions.

I assume the road proposed is a "Farm-to-market" road to be built only by county funds raised by taxation under Section 7890 R.S. Mo., 1929, and that neither Federal Government funds nor state aid will be used in building same. Section 7858 R.S. of Mo. of 1929, same being part of the Farm-to-market Road Statute of 1927, provides as follows:

"POWER AND DUTY OF COUNTY HIGHWAY COMMISSION--It shall be the duty of the county highway commission and said commission shall have the powers 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

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 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"

Section 7859 R.S. Mo. 1929 provides as follows:

"LOCATION OF COUNTY HIGHWAY TO BE SUBMITTED TO STATE HIGHWAY COMMISSION FOR APPROVAL--Before construction of any county highway located, laid out, and designated as in this article authorized and provided, or any money, in excess of the cost of such location and designation shall be expended thereon, it shall be the duty of county highway commission to submit such location to the state highway commission for its approval, and, upon approval of such location by the state highway commission, the county highway commission shall proceed to procure the right-of-way for said county highways, said right-of-way to be of the standard width required by the state highway commission for secondary highways, not less, however, than sixty feet wide, and secure title in fee to such right-of-way by deed of conveyance, or by judgment of a court of competent jurisdiction through condemnation. ***"

It is contemplated these farm-to-market roads shall eventually be a part of the state highway system of hard surfaced roads, and to that end Section 7860 R. S. Mo. 1929 provides that roads built as farm-to-market roads shall be of such type and on such grade as to permit improvement thereof ultimately into hard surfaced roads.

Section 7866, R.S. Mo. 1929, provides:

"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

The first question is: If county commission designates a road to be built from Galena to Reed Springs must the designation thereof be approved by the state commission before the road can be built?

Section 7858 of the Farm-to-market Road Statute provides specifically the county 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 power of the county commission is to locate, construct and maintain a system of farm-to-market roads subject to the approval of the state highway commission.

Here is a particular specific method laid out to be followed by the county highway commission in locating, designating, constructing and maintaining the system of farm-to-market roads. In my opinion Section 7858 provides first, for a system of county farm-to-market roads to be laid out, designated and located by the county commission subject to the approval of the state commission, and the word "system" as here used means an organized plan or scheme of county roads connected and combined into a harmonious whole, adapted and designed to best and most conveniently serve the public using same;

Second, that such system when approved by the state commission, the county commission is empowered to construct and maintain subject to the limitation as to location of a particular road contained in Section 7859;

Third; that the system should be planned so as to as far as is practicable afford a connection with centers of population not now located on any state highway, and planned so as to afford, within practicable limits, connection with county highways connecting the centers of population of adjoining counties.

This construction contemplates the county commissioners will cooperate with state commission and state commission cooperate with the county commission in working out a system of county roads for the farm-to-market roads of the county, and necessarily in doing this work the county commission will incur some expenses in designating and locating proposed roads, and submitting same to state commission as part of the system of county roads; and in the creating of the plan or system of roads, neither the state commission nor the county commission will be allowed to arbitrarily exercise its rights to the manifest injury of the other.

C & O Ry. Co. vs. Thompson, 176 S.W., 1.c. 24

In this situation our Supreme Court said, in State ex rel Barlow vs. Holtkamp, 14 S.W. (2d) 1.c. 650:

"Whenever a statute limits a thing to be done in a particular form, it necessarily includes in itself a negative, namely: that the thing shall not be done otherwise."

Applying this rule of construction to Section 7858, it is my opinion

the county commission cannot locate, lay out and designate a system of farm-to-market roads and build same or any part thereof without first having the system and the particular road thereof approved by the state commission, and therefore if county commission designate a road to be built from Galena to Reed Springs, before it can be legally built, the state commission must approve same.

The second question is: if county commission has designated a road to be built between Galena and Reed Springs as part of the farm-to-market roads of the county and such designation meets the approval of the state commission and then the county commission locates the route of road between Galena and Reed Springs, can the state commission refuse to approve the route selected by the county commission and locate another route for said road?

This brings us to a construction of Section 7859 of the Farm-to-market Road Act. The language of Section 7859 is:

"Before construction of any county highway located *** as in this article authorized and provided *** it shall be the duty of the county highway commission to submit such location to the state high commission for its approval ****"

It will be observed that the language of Section 7859 is:

"Before construction of any county highway, located, laid out, and designated as in this article authorized and provided *** it shall be the duty of the county highway commission to submit such location to the state highway commission for its approval, and, upon approval of such location by the state highway commission, the county highway commission shall ****"

The language in the section "Any county highway, located, laid out, and designated as in this article authorized and provided" evidently refers to the locating, laying-out and designating of county highways as a part of county farm-to-market road system established in compliance with Section 7858.

That this construction of the language quoted from Section 7859 is correct, is borne out fully by the following language contained in Section 7859:

"Before construction of any county highway located, laid out, and designated as in this article authorized and provided, or any money, in excess of the cost of such location and designation shall be expended thereon, it shall be the duty of the county highway commission to submit such location to the state highway commission for its approval ****"

This Section, 7859, recognizes that a system of farm-to-market roads is to be laid out by the county highway commission and approved by the state commission and that some costs must be incurred therein. But Section 7859 in my opinion also forbids the building of a farm-to-market

road between two points after state commission has approved a road between the points as a part of the county system until the location of the route of the road has been approved by the state commission.

Also, if county highway commission does not locate a route for a road between two points the selection of which road as part of county highway system has been approved by state commission, or if county commission and state commission cannot agree on route or location for such road, the state commission can locate it. This answers the second question.

Section 7860 of Farm-to-market Act requires the county commission to build the road of a type and with a grade so that it can be ultimately made into a surfaced state highway, and Section 7866 of the same Act authorizes the state commission when authorized by law to take over the roads the county highway commission builds and pay the county therefor.

In this provision for taking over the farm-to-market roads is disclosed the reason why the Legislature intended this system of farm roads to be located and constructed only with the approval of the state commission, to-wit: the Farm-to-market roads are intended by the Legislature to become a part of the state highway system and therefore should be so located and built that they can readily be hard surfaced and made an integral part of the state wide hard surfaced road system.

Very truly yours,

EDWARD C. CROW

APPROVED:

Attorney General

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