

Duties, power and rights of State Highway Department and County, under Article 2, Chapter 42, to grade and construct roads within the county.

February 23, 1933

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Honorable Walker Pierce  
Prosecuting Attorney  
Howard County  
Fayette, Missouri

Dear Sir:

Answering your inquiry:

"Does the State Highway Department have the right to demand that the County grade a right of way, bought by the County, for a "farm to market" road, before they will complete the road or work on it? In other words, if the County buys the right of way for such roads can they make the Highway Department grade and complete them, or is it right for the Highway Department to demand that the County Grade such right of ways."

You do not state in your letter whether or not you are operating under Article 2, of the Roads and Bridges, commencing with Section 7856 of the R. S. of 1929. I assume that you are operating or intend to operate under that chapter, and accordingly will answer your query as if you were operating or working under what is commonly known as "Farm to Market" road. (Article 2)

After providing for the appointment of commissioners as outlined under Sections 7856 and 7857, the statute proceeds to state some of the power of the commission. Section 7858 states:

"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 highway\*\*\*\*\*to the end that all parts of the county shall be connected with the state highway system.\*\*\*\*\*"

Then follows Section 7859 which says:

"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 etc."\*\*\*\*\*

In Section 7863, the county highway commission is given power to use and employ whatever means, methods, or power, that may be necessary in the construction which would include grading and maintenance of said county highways, including the power to build culverts and bridges.

See also Section 7864. To same effect is section 8067.

Harris v. Bond Co., 244 Mo. 664.

From the foregoing it will appear that the state highway commission has no right to compel the county to grade the right of way bought by the county for a farm to market road, it would be a matter within the counties power and discretion.

You will note that at no place in this chapter is the state highway commission compelled to help the county highway commission except and when under 7866 the state highway commission may take over all or any part of the highways 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 taken over by said state highway commission.

If, however, you are not under Article 2 as I have assumed you are through out the foregoing opinion, but that this is one of the

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roads mentioned and described under Section 8120, "Howard County, p. 2296, Statutes of 1929." Then and in that event the State Highway system must govern, and the state department would be compelled to construct, reconstruct, and improve and ever after maintain as public roads, and the necessary grading, hard surfacing, bridges and culverts therefor shall be constructed by the state of Missouri.

Of course, if it is one of these roads mentioned just above, it would be up to the state to do all the grading and everything else connected therewith, in addition to reimbursing you for what you have expended. See Section 44a, Article 4, p. 91 of the state constitution. 19 S. W. (2nd.) 643 l. c. 648.

Very respectfully yours,



Geo. B. Strother  
Assistant Attorney General.

APPROVED

ROY MCKITTRICK  
Attorney General.

GBS:MM