

HAS THE CITY OF THE THIRD CLASS (EXCELSIOR SPRINGS) THE RIGHT TO DEED TO THE STATE HIGHWAY COMMISSION RIGHT OF WAY THROUGH PUBLIC PARKS FOR HIGHWAY ROAD PURPOSES?

ANSWER: IT HAS. ✓

February 24, 1933

Hon. James S. Rooney
Prosecuting Attorney
Clay County
Liberty, Missouri

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Dear Sir:

Answering your letter of February 20, 1933, relative to the inquiry of Dr. C. G. Thomas as to whether the City Council could give a deed to the right-of-way through their public parks to the State Highway Commission (I take it for a highway through same):

In the ordinance you enclosed (and herewith returned to you, as per request) when this park was established, it says "An ordinance to provide for establishing a public park in the City of Excelsior Springs and for taking private property therefor", and I assume from Article 3 that the said park was legally and properly established through suitable proceedings in the Circuit Court.

1. Under Section 6719, R.S. 1929, cities of the third class may become bodies corporate under the provisions of this article * * * and may receive and hold property, both real and personal, within such city * * * and may purchase, hold, lease, sell or otherwise dispose of any property, real or personal it now owns or may hereafter acquire. The city having acquired this property for park purposes under the ordinance you refer to has undoubtedly the right to dispose of such portions as may seem proper (within reasonable limits) under the foregoing section.

See also Sections 8131 and 8132.

Section 8131 says:

" * * * and convey such rights-of-way 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."

2. Under Section 8111 the State Highway Commission shall have power to purchase, lease or condemn lands * * * acquire the right of way for the location, construction, reconstruction, widening, improvement or maintenance of any state highway or

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any part thereof * * * acquire the right-of-way for the location, construction, reconstruction, widening, improvement or maintenance of any highway ordered to be built by the Bureau of Public Roads of the Department of Agriculture of the United States Government * * * acquiring lands for any other purpose necessary for the proper and economical construction of the State Highway system * * * and if necessary said Commission shall have power to condemn such lands in the name of the State of Missouri.

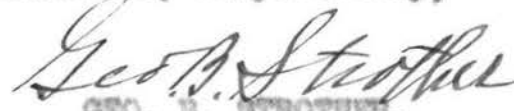
1. It will be seen under the first three sections, namely, 8719, 8131 and 8132, the City of Excelsior Springs has the right to dispose to the State the right-of-way through this public park.

2. Under Section 8111 the State has the power to acquire and use for highway purposes the right-of-way through the city park.

Therefore, it would seem that the City Council of Excelsior Springs has a right to deed to the State the right-of-way and the State, under the sections referred to, has a right to accept and use same.

Hoping this will answer the purposes and furnish the information to you that Dr. Thomas and others wish, I am,

Yours very respectfully,


GEO. B. STROTHER,
Assistant Attorney General

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Approved:

Attorney General.