

PARK BOARD: Administration over roads and bridges in
and contiguous to State Parks.

March 29, 1939



Honorable I. T. Bode, Director
State Park Board
Jefferson City, Missouri

Dear Sir:

We acknowledge your request for an opinion dated
March 3, 1939, which reads as follows:

"In a number of State parks we are bothered with the problem of location and maintenance of county roads. As a matter of policy, it would be most desirable for no county roads to extend into any part of a State park, and in those cases that county roads do extend into State parks, it appears highly desirable to make some arrangement for the maintenance of those county roads. It would appear best for all roads in State parks to be recognized as State highways and to be built and maintained by the State Highway Department. The question of law covered in this letter is two-fold:

1. What jurisdiction does the State Park Department have over county roads which may now be located in State parks? In more detail, there are some existing county roads which we would like to close; one in particular is located at Bennett Spring. The maintenance of this road is unnecessary for the people of Dallas County. The maintenance of the road is consequently a problem of the State Park Department and we would like to close the road and maintain only one entrance to Bennett Spring. There

are several similar cases in the State Park System and the point of law on which we would like to have an opinion is, who has precedence, the State Park Department or the county, in the matter of control, location and maintenance of county roads which may be on the interior of State parks?

2. The second point of law on which an opinion is requested is the status of a road on the inside of a State park so far as the State Highway Department is concerned. We consider the best possible policy to be a policy which would include all roads on the inside of the State parks as a part of the State Highway System. Is there any point of law which covers this?"

We also acknowledge your letter of March 23, 1939, which reads as follows:

"Reference is made to my letter to you of March 3, 1939, in which an opinion was requested on the responsibility of the State Highway Department for the construction and maintenance of roads in State parks.

I refer particularly to the last three lines in the fourth paragraph of Section 44a, Article IV of the Revised Statutes of Missouri, 1929, which is found on page 92 of Volume I of the 1929 statutes. These three lines read,

' * * * and empowered to locate, construct and maintain highways and bridges in State parks, now or hereafter established, and connect the same with the primary or secondary highways of the State.'

In recent years many miles of roads have been built in the State parks by CCC and WPA. The maintenance of these roads is a serious problem. My interpretation of the lines quoted above is that the State Highway Department is responsible for the roads and bridges in all State parks and

is responsible not only for the maintenance but for the construction of these roads.

I would like to know if this part of the Constitution of the State is still in force and if still in force, if it means precisely what it says. I would like to be further advised regarding what steps we should take to cause the State Highway Department to assume the maintenance of all existing roads in State parks and to provide for the construction of new roads in parks.

We are now making preparation to build road systems in the new parks, such as Crowder and Pershing, and in the event this part of the law dictates that the State Highway Department shall be responsible for the building of these roads, I would like to be so advised. In the event the State Highway Department actually is responsible for the maintenance and construction of park roads, the assumption of this responsibility by the Highway Department would prove an enormous help to the Park Department, both from a financial standpoint and from the standpoint of administration."

Article 4, Section 44a, Missouri Constitution provides for a Seventy-five million dollar (\$75,000,000.00) bond issue and for establishing the Missouri State Highway System. It provides also that said funds be ear marked for certain definite purposes, and in the ninth paragraph of said constitutional provision, it reads in part:

" * * * * * from the funds herein provided for construction of primary and secondary highways and from the state road fund * * * * * The State Highway Commission is hereby also authorized and empowered to locate, construct and maintain highways and bridges in State

parks, now or hereafter established,
and connect the same with the primary
or secondary highways of the State. *
* * * * *

Article 12, Chapter 42 R. S. Mo. 1929, provides for
the establishment of the State Highway Commission and Sec-
tion 8104 R. S. Mo. 1929 provides in part:

"The commission shall: * * * * *

(3) Provide for aiding county highway
engineers or other officials of civil
subdivisions in establishing gradients
and alignments, and preparing suitable
systems for maintenance of highways and
bridges.

(4) Cause standard plans, specifications
and estimates to be prepared for the re-
pair and improvement of highways and the
construction and repair of bridges by
civil subdivisions. * * * * *

Section 8093 R. S. Mo. 1929 provides in part:

"Whenever in this article, or in any pro-
ceeding under this article, the following
words or terms are used, they shall be
deemed and taken to have the meanings
ascribed to them as follows: 'Civil sub-
division,' a county, township, road dis-
trict or other political subdivision of
the state or quasi public corporation
having legal jurisdiction of the con-
struction and maintenance of public roads.
* * * * *

The State Park Board is a "Civil subdivision" as de-
fined by statute.

Laws of 1937, page 520, Section 2 incorporates the
State Park Board and establishes its powers and duties as

follows:

"The State Park Board shall have the power to acquire by purchase, eminent domain or otherwise, all property necessary, useful or convenient for the use of said Park Board or the exercise of its powers hereunder necessary for the recreation of the people of the State of Missouri. In the event the right of eminent domain be exercised it shall be exercised in the same manner as now or hereafter provided for the exercise of eminent domain by the State Highway Commission. Said Park Board shall have the power to make and promulgate all rules and regulations as it may deem necessary for the proper maintenance, improvement, acquisition and preservation of all state parks. Said park board is hereby authorized to employ such persons or assistants as may be necessary and may fix the compensation of persons thus employed within the amount appropriated therefor by the Legislature. All vouchers for the payment of bills or for compensation shall be drawn and approved by the Director of State Parks and when presented to the State Auditor shall be paid out of the funds appropriated for such purposes.

By the above statute we see that the Legislature, in creating the State Park Board, was silent as to jurisdictional powers over county highways previously dedicated to public use, yet in or contiguous to state parks.

The power in the State Park Board to make and promulgate rules necessary for the improvement of all state parks is no doubt power to establish and maintain a system of roads and bridges on or through land acquired by a said State Park Board, where the state highway Commission has not assumed its constitutional jurisdiction. Whenever the State Park Board sees fit, the State Park Board, being a corporate body and acting as any proprietor of land, can take steps to vacate county roads con-

tiguous to state parks by following the legislative scheme for vacating public roads.

Section 7836 R. S. Mo. 1929 provides:

"Any twelve freeholders of the township or townships through which a road runs may make application for the vacation of any such road or part of the same as useless, and the repairing of the same an unreasonable burden upon the district or districts; the petition shall be publicly read on the first day of the term at which it is presented, and the matter continued without further proceedings until the next term. Notice of the filing of such petition and of the road sought to be vacated shall be posted up in not less than three public places in such township or townships, at least twenty days before the first day of the next term of the court, and a copy of the same shall be personally served on all the persons residing in said district whose lands are crossed or touched by the road proposed to be vacated in the same manner as other notices are required to be served by law; and at the next regular term the same shall again be publicly read on the first day thereof. If no remonstrances be made thereto, in writing, signed by at least twelve freeholders, the court may proceed to vacate such road, or any part thereof, at the cost of the petitioners; but if a remonstrance thereto, in writing, signed by at least twelve freeholders, residents of such township or townships, be filed, and the court after considering the same shall decide that it is just to vacate such road, or any part thereof, against the vacation of which the remonstrance was filed, the costs shall be paid by the parties remonstrating, and the original costs, and damages for opening such vacated road shall be paid by the petitioners to those who paid the same: Provided, that if five years have elapsed since the original opening of the same no such reimbursement shall be made."

Section 7837 R. S. Mo. 1929 provides for an appeal from an order and judgment of a county court vacating a public road. Section 7839 R. S. Mo. 1929 defines county roads as follows:

"All roads in this state that have been established by any order of the county court, and have been used as public highways for a period of ten years or more, shall be deemed legally established public roads; and all roads that have been used as such by the public for ten years continuously, and upon which there shall have been expended public money or labor for such period, shall be deemed legally established roads; and nonuser by the public for ten years continuously of any public road shall be deemed an abandonment and vacation of the same."

CONCLUSION

Answering your first question: If a county road through any state park ought to be vacated, then the statutory petition to vacate should be filed in the county court and the matter decided pursuant to the statutory procedure for such cases. The State Park Board does not have jurisdiction to arbitrarily vacate a county road.

Answering your second question: The constitution above quoted, being the fundamental law of this state, all legislative acts and the conduct of administrative boards dealing with the location, construction and maintenance of roads and bridges in state parks must be construed according to constitutional intentions. We are of the opinion that the State Highway Commission could, at their pleasure, providing there be available constitutional funds, locate, construct and maintain highways and bridges in state parks, and connect the same with the primary and secondary highways of the state.

We are of the opinion that nothing in said constitutional provision makes it mandatory on the State Highway Commission to take over, construct or maintain highways and bridges in or contiguous to state parks. Roads and bridges in state parks become the problem of the State Highway Department only when it assumes to construct and maintain same as a part of the State

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Highway System out of state highway funds.

If the public be best served by a public policy where-
in all roads and bridges in state parks be taken over and
absorbed as a part of the State Highway System, then the State
Highway Commission should be approached with the proposition
for their serious consideration. The State Highway Commission
has in the past been approached with such problems by other
"Civil subdivision" of the state resulting in the adoption of
roads and bridges into the state highway system.

As provided in Section 8104, supra, prior to said roads
and bridges becoming a part of the State Highway System, the
State Park Board can demand of the State Highway Commission
aid in establishing gradients and in preparing suitable systems
for maintenance of highways and bridges and can demand standard
plans, specifications and estimates to be prepared for the re-
pair and improvement of highways and bridges in state parks.

Respectfully submitted,

WM. ORR SAWYERS
Assistant Attorney General

APPROVED:

W. J. BURKE
(Acting) Attorney General

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