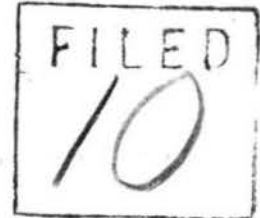


COUNTY COURTS: It is the duty of the county to maintain county  
ROADS AND roads through State parks.  
BRIDGES:

September 12, 1939

9-13



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

Dear Sir:

We are in receipt of your request for an opinion, dated September 6, 1939, in which you inquire as to the counties' responsibility for the maintenance of county roads through State parks. There are several sections in the Revised Statutes dealing with the duties of various agencies in regard to the repair and maintenance of public roads. The first is Section 7826, R. S. Mo. 1929, which reads as follows:

"Public roads shall be cleared of all obstructions therein that hinder or interfere with travel or traffic thereon, and shall be made firm, and the surface thereof shall be kept in a reasonably smooth and level condition; and all necessary bridges and culverts shall be constructed for same."

Two other sections in regard to the duties of overseers to be appointed by the county court are Sections 7874 and 7876, which are identical in language and which read as follows:

"It shall be the duty of the road overseer to keep the roads in his district in as good repair as the funds at his command will permit."

Again, in Sections 8013 and 8014, the duties of the county highway engineer in regard to the repair of roads are set out and are as follows:

"The county highway engineer shall have direct supervision over all public roads of the county, and over the road overseers and of the expenditure of all county and district funds made by the road overseers of the county. He shall also have the supervision over the construction and maintenance of all roads, culverts and bridges. \* \* \* \* \*"

"The county highway engineer shall personally, or by deputy, inspect the condition of the roads, culverts and bridges of each district as often as practicable, and upon the written complaint of three freeholders in any such district of the bad or dangerous condition of the roads, culverts or bridges of such district, or of the neglect of duty by any road overseer of any such district, or of neglect of any contractor on roads let by contract, it shall be the duty of the county highway engineer to at once visit said road and investigate the complaint, and, if found necessary, to at once cause such road to be placed in good condition."

Section 8017 requires the road overseers to follow the plans and instructions of the county highway engineer in all matters concerning the improvement of the roads. In case the particular counties in which these roads lie have abolished the county highway engineer system, which they may do by vote, the county surveyor is ex officio highway engineer and has the same duties.

The foregoing sections apparently require the various authorities to repair roads without the exercise of their discretion in the matter, however, Section 7946, a later section passed in 1917 and being found in Laws of Missouri, 1917 at page 467, has been interpreted by the courts to give the county court, township board or road commissioners the power to improve only such roads as they consider necessary. In the case of Schmidt v. Berghaus, 223 S. W. 939, being a case in which certain citizens and taxpayers sought a mandamus to compel the repair of certain roads, we find the following in the opinion of the court, l. c. 940:

"As to the mandatory part of the injunction, we find that section 10585, R. S. Mo. 1909, and section 79, p. 467, Session Act of 1917 (which is section 7946), leave it in the discretion of commissioners as to what roads in any road district shall be improved, and the manner of the improvements. The evidence in the record before us fails to show that the commissioners are acting in violation of the law, or are threatening to so act. In such case it is beyond the province of a court of equity to make a special order on a defendant, requiring him to do what the law has already declared. See *McLemore v. McNeley*, 56 Mo. App. 556; *Lester Real Estate Co. v. St. Louis*, 169 Mo. 227, 69 S. W. 300."

## CONCLUSION.

It is our conclusion, in view of the foregoing authority, that the responsibility for the maintenance of county roads passing into or through the various State parks lies with the county courts of the respective counties, or with the commissioners in special road districts, but that no action will lie to compel the various agencies to repair said roads.

Respectfully submitted,

ROBERT L. HYDER  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
(Acting) Attorney General

RLH:VC