

COUNTY COURTS: Have authority to institute suits to prevent trespasses upon county property.

December 5, 1939

12-7

Mr. Edward V. Long  
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Dear Sir:

This will acknowledge receipt of your letter of November 9, 1939, requesting an opinion as follows:

"Kindly advise me whether or not a County Court acting under authority of Section 2078, Revised Statutes of Missouri, 1929, has the authority to institute an injunction suit against certain trespassers on County lands. Of course, this assumes that there would be sufficient grounds for an injunction providing the County Court had the authority to institute and prosecute said suit."

In *Carpenter vs. St. Joseph* 263 Mo. 705, it is held an injunction is the proper remedy to prevent trespasses upon property.

Section 698, R. S. Mo. 1929, provides that, "Every action shall be prosecuted in the name of the real party in interest \* \* \* ." In *Swift & Co. v. Wabash Railroad Co.* 149 Mo. Appeal, l.c. 531, it is stated, "Plaintiff is the real party in interest if he has and shows the complete legal title to the cause of action asserted."

Section 2078, R. S. Mo. 1929, provides:

"The said court shall have control and management of the property, real and personal, belonging to the county, and shall have power and authority to purchase, lease or receive by donation any property, real or personal, for the use and benefit of the county; to sell and cause to be conveyed any real estate, goods or chattels belonging to the county, appropriating the proceeds of such sale to the use of the same, and to audit and settle all demands against the county."

Section 12071, R. S. Mo. 1929, provides:

"The county court of each county shall have power, from time to time, to alter, repair or build any county buildings, which have been or may hereafter be erected, as circumstances may require, and the funds of the county may admit; and they shall, moreover, take such measures as shall be necessary to preserve all buildings and property of their county from waste or damage."

It seems that under the last mentioned statutes the power to institute an injunction suit to prevent trespasses upon county land would be vested in the county court because that body is vested with the control and management of property belonging to the county and is directed to take what action may be necessary to prevent waste or damage to said property. Under the rule as above stated, the county is the real party in interest because it owns all county lands - the county court being merely the agent of the county with respect to the control and management of county lands.

In Stoddard County v. Malone 115 Mo. 508, the County of Stoddard instituted an action to recover damages for trespass upon certain lands belonging to the county. At l.c. 512, the court commented on the right of the county to bring said action and said:

"The plaintiff being the owner of the land and no other person being in the actual occupancy thereof, can maintain its action for the injury complained of. *Brown v. Hartzell*, 87 Mo. 564 and cases cited."

While the Malone case is not directly in point in that it is a trespass action, we think it applies by analogy and that if the county is authorized to bring a suit to recover damages resulting from a trespass, it also is authorized to maintain a suit to prevent a trespass upon county property.

CONCLUSION

Therefore, it is our opinion that the county court is authorized to institute and maintain a suit for injunction in the name of the county against persons who are trespassing upon county property.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

J. E. TAYLOR  
(Acting) Attorney General

LLB:RT