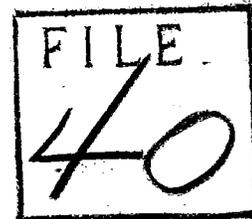


HIGHWAYS: State Highway Commission has exclusive
MUNICIPAL CORPORATIONS: control over location of highways within
the confines of municipal corporation.

September 10, 1941

Mr. Roger Hibbard
City Attorney
Hannibal, Missouri



Dear Sir:

This department is in receipt of your request for an official opinion which reads as follows:

"A question has arisen before the City Council of the City of Hannibal concerning the right of the City to erect certain highway markers designating an optional U. S. Highway.

"At present United States Highway No. 36 passes through Hannibal, and enters Hannibal at the Mark Twain Memorial Bridge on the east from the State of Illinois. It then proceeds along North Third Street to its intersection with Broadway street, thence west along Broadway to St. Marys Avenue, and thence west along St. Marys Avenue, from which Avenue it is diverted approximately one (1) block to an intersection outside of the City Limits, with U. S. Highway No. 61.

"At a meeting of the City Council of the City of Hannibal on September 2, 1941, the City Council passed a resolution directing the Traffic Commission of the City of Hannibal to erect signs reading, 'Optional Route U. S. Highway 36', over a route described as follows:

"From the Mark Twain Memorial Bridge, proceed thence west along Mark Twain Avenue and Harrison Hill to the City

Limits of the City.

"For your information, the proposed optional route would intersect United States Highway 61 at a point outside of the City Limits and would pass over a road now controlled by the Missouri State Highway Department, and known as City Route U. S. 61, for a distance of about five-eighths ($5/8$) of a mile, which said distance also lies outside of the City Limits.

"As City Attorney I would like an opinion from your office as to the right and power of the City of Hannibal to erect such markers, first, over that part of the proposed route as lies within the City, and, second, as to that part of the route which lies outside of the City.

"Since this matter concerns the state, through the act creating the Missouri State Highway Commission, I am asking your office for this opinion."

Section 8782, R. S. Missouri 1939, provides in part as follows:

"The state highways as herein designated shall be under the jurisdiction and control of the commission. * * * * "

Section 8768, R. S. Missouri 1939, provides:

"There is hereby created and established a state wide connected system of hard surfaced public roads extending into each county of the state, which shall be located, * * * as public roads, * * * "

The power of the State Highway Commission is set forth in *Selecman et al. v. Matthews et al.*, State Highway Commission, 15 S. W. (2d) 788, 321 Mo. 1047, as follows:

"Said section 29 of the State Highway Act describes in general terms the routes along which the state highways shall be 'located'; the power to so 'locate' them is conferred upon the state highway commission. See concurring opinion of White, J., in *Castilo v. State Highway Commission*, 312 Mo. 244, 276, 279 S. W. 673. Such power is circumscribed by no limitations, nor are any rules or regulations prescribed for the manner of its exercise. So far as any of the express terms of the statute are concerned, the power is plenary.
 * * * * *

Therefore, the Legislature has, by statute, given to the State Highway Commission the "plenary" power as to the location of the state highways.

Section 8781, R. S. Missouri 1939, permits the location of a state highway through city streets. See *State ex rel. City of Hannibal v. Smith*, State Auditor, 335 Mo. 825, 74 S. S. (2d) 367. The general rule in regard to the location of highways is given in 25 Am. Jur., page 545, as follows:

"* * the state has absolute control of the highways, including streets, within its borders, even though the fee is in the municipality. * * * * *

A reading of the statutes discloses that our Legislature has given to the State Highway Commission exclusive control over the location of the state highways and nowhere has delegated to the various municipal corporations any power in regard thereto. This view is recognized in *State ex rel. McKittrick v. Missouri Utilities Company*, 96 S. W. (2d) 607, in which our Supreme Court, speaking of the highway commission's powers over highways within the confines of a city, said:

"* * In matters immediately concerned with the construction of paving of the highways and their maintenance, the commission has jurisdiction. * * * * *

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Section 8755, R. S. Missouri 1939, provides in part as follows:

"The commission is authorized to prescribe uniform marking and guide boards on the state highways, and to cause to be removed all other markings and guide boards and advertising signs. * * * * *

Under the authorities of the above statute, the commission has the exclusive power to erect guide boards and markings, and any action on the part of a municipality which attempts to invade this exclusive right is unlawful and said markings and guide boards may be removed by the State Highway Commission.

In answer to your second question, we believe it is obvious that since a municipal corporation has no power in regard to the location of a state highway or right to erect highway markings and guide boards within the confines of the city limits that it would certainly have no right to do such things outside of the city limits.

CONCLUSION

It is, therefore, the opinion of this department that the State Highway Commission has exclusive jurisdiction and control over the state highways and has the exclusive right to prescribe the location of such highways and to erect guide boards and highway markings and no municipal corporation is authorized to alter or divert such location or to erect guide boards of its own.

Respectfully submitted

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APPROVED:

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