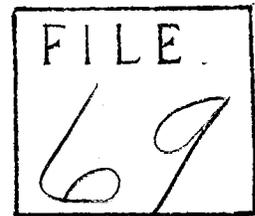


ROADS AND BRIDGES: County may ask damages for injury to county roads in the original condemnation suit by the United States condemning roads in an army area.

December 1, 1941

Hon. James L. Paul
Prosecuting Attorney
McDonald County
Pineville, Missouri

12-15



Dear Sir:

We are in receipt of your request for an opinion under date of November 24, 1941, which reads as follows:

"The County Court has asked me to write you for your opinion relative to roads in the camp area in this county.

"The Court has been informed that in many instances, people who have land adjoining the camp area will be closed in unless new roads and bridges are built to allow them egress and exgress from their property. Inasmuch as most of the farms located south of the camp's present survey line have their roads running north to what is known as the Goodman-Erie-Bethpage road, and part of this road will be within the camp enclosure, would not the federal government be liable and responsible to the McDonald County Court for damages and expenses in rebuilding roads in that area?"

Article I, Section 8, Clause 17 of the Constitution of the United States, reads as follows:

"To exercise exclusive legislation, in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of government of the United States, and to execute like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock yards, and other needful buildings; * * * *."

By reason of the above section of the Constitution of the United States, Congress enacted Section 257, Title 40, page 76, United States Code Annotated, which reads as follows:

"In every case in which the Secretary of the Treasury or any other officer of the Government has been or shall be, authorized to procure real estate for the erection of a public building or for other public uses he shall be authorized to acquire the same for the United States by condemnation, under judicial process, whenever in his opinion it is necessary or advantageous to the Government to do so. And the United States district courts of the district wherein such real estate is located, shall have jurisdiction of proceedings for such condemnation, and it shall be the duty of the Attorney General of the United States, upon every application of the Secretary of the Treasury, under this section and section 258 of this title, or such other officer,

to cause proceedings to be commenced for condemnation, within thirty days from the receipt of the application at the Department of Justice."

Under the above United States law the government of the United States through the Secretary of the Treasury was empowered to bring condemnation proceedings for the acquiring of land and for public purposes, and also granted the United States' District Courts of the district where the real estate is located jurisdiction of the proceedings. Congress also enacted Section 258, Title 40, page 84, of the United States Code Annotated, the following:

"The practice, pleadings, forms and modes of proceedings in causes arising under the provisions of section 257 of this title shall conform, as near as may be, to the practice, pleadings, forms and proceedings existing at the time in like causes in the courts of record of the State within which such district court is held, any rule of the court to the contrary notwithstanding."

Under the above Section 258 it provided that the procedure in a condemnation proceeding would be the same in the federal court as is prescribed in the state law. The state law of condemnation proceedings is covered by Article 2 of Chapter 8 of the Revised Statutes of Missouri 1939.

By reason of the above United States and State laws the government proceedings are carried on under their eminent domain procedure, and a petition of condemnation is filed in the federal court. After the commissioners have been appointed

by the federal court in compliance with the state law of condemnation an award is made by the commissioners. It is then paid into court and at that time the government takes possession of the lands in question. The procedure in the federal court is then the same as in the state court as to the time of appealing from the order of the commissioners. In the case of U. S. v. 8,557.16 Acres of Land in Pendleton County, W. Va. (D. C. W. Va. 1935) 11 F. Supp. 311, it was held that in condemnation proceedings by the United States federal courts must follow methods required by state statute, in addition to local law for condemnation of property, so far as required to meet needs of justice. It was also held in U. S. v. Crary (D. C. Va. 1932) 2 F. Supp. 870, that the condemnee claiming damages to residue of his land or estate has the burden of proving what the residue is and the injury to the market value thereof.

In the same case of U. S. v. Crary, supra, it held that against the federal government, state statutes authorizing award for damages to condemnees "adjacent property" must be deemed limited to residue of tract. Under the facts in your request you state that the roads adjoining the camp area have been closed by reason of the condemnation of the real estate for the use as a camp and fort. The government in case of a condemnation not only condemns the roads actually owned by the state, but also condemns the easement on property held by counties for road purposes. We do not know who the defendants were in the condemnation of the area now known as Camp Crowder, but if the government has followed its usual procedure and has filed a condemnation proceeding against the state for its roads, the adjoining property owner and the easement owned by the county on its roads, in such a case the county could set up, upon a trial of the case from the appeal from the commissioner, the fact that the adjacent roads upon which the county holds easements have been injured and would result in damages to McDonald County. This matter must be tried before the jury in the federal court upon the appeal from the award of the commissioner.

CONCLUSION.

It is therefore the conclusion of this department that the government by the closing of roads upon which the county

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owns an easement and the damage to the adjacent property owner for the roads which have been damaged is a matter to be passed upon by the jury in the federal court when the trial is had upon the appeal from the award of the commissioners.

It is further the opinion of this department that the county roads which have been closed are considered adjacent property rights of the county to that of the roads or easements on the property which has been condemned directly in the camp area.

Respectfully submitted,

W. J. DURKE
Assistant Attorney-General

APPROVED:

VANE C. THURLO
(Acting) Attorney-General

WJB:CP