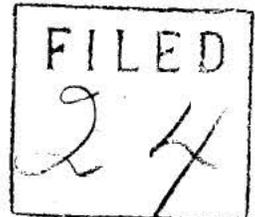


COUNTY COURTS: After county court has given assent to electric company to erect poles, etc., through, on, under or across the public roads or highways of the county, and electric company has started construction of electric line and installed poles, etc., county court cannot revoke such order of assent.

September 11, 1947



9/13

Honorable William Lee Dodd
Prosecuting Attorney
Ripley County
Doniphan, Missouri

Dear Sir:

This is in reply to your letter of recent date, requesting an official opinion of this department, and reading as follows:

"The County Court of Ripley County made an order granting the Arkansas-Missouri Power Co. permission to construct poles, conductors, guy wires, etc., across part of the County for a distance of about 20 miles to supply electric current for a pumping booster station for the Magnolia Pipe Line Co. The Co. has surveyed out its route and started construction. Now the Ozark Border Electric Co. (O.B.E.A.) wants the County Court to revoke the order made to the Arkansas-Missouri Power Co. Does the County Court have the right to revoke this order at this time?

"It is merely a battle for priority between the two power Cos. Ark.-Mo. does not intend to supply local current but only to furnish current for the booster station.

"Please answer this by Sept. 15, if possible. The County Court meets on the 15th."

In writing this opinion, we assume that the order granting the Arkansas-Missouri Power Company permission to construct poles, conductors, guy wires, etc., in Ripley County was made under authority of Section 8573, R. S. Mo. 1939. Such section provides as follows:

"No person or persons, association, companies or corporations shall erect poles for the suspension of electric light, or power wires, or lay and maintain pipes, conductors, mains and conduits for any purpose whatever, through, on, under or across the public roads or highways of any county of this state, without first having obtained the assent of the county court of such county therefor; and no poles shall be erected or such pipes, conductors, mains and conduits be laid or maintained, except under such reasonable rules and regulations as may be prescribed and promulgated by the county highway engineer, with the approval of the county court."

The rule regarding the power of county courts to rescind or revoke an order such court has made is found in the case of Mead v. Jasper County, 305 Mo. 476, l. c. 486-487, where the Supreme Court of Missouri, in banc, said:

"The general rule is laid down in 15 Corpus Juris, page 470, where it is said:

"Where a county board or court exercises functions which are administrative or ministerial in their nature and which pertain to the ordinary county business, and the exercise of such functions is not restricted as to time and manner, it may modify or repeal its action; but in no event has such court or board the power to set aside or to modify a judicial decision or other made by it after rights have lawfully been acquired thereunder, unless authorized so to do by express statutory provision The same is the case after an appeal has been allowed, or where some special statutory power is exercised, the time and mode of the exercise thereof being prescribed by statute. Where the previous action of the board is in the nature of a contract which has been accepted by the other party, or on the faith of which the latter has acted, it cannot be rescinded by the board without the consent of the other party. Conversely, where the proposition has not been accepted or acted on by the other party, the board may restrict or rescind its

action. In the absence of express statutory authority, a county board cannot review or reverse the act of a prior board performed within the scope of authority conferred by law. A county board or court may, however, at the term or session at which an order is made, revise or rescind it, provided this is done before any rights accrue thereunder, but ordinarily they have no power to do such act subsequent to such term or session.'

"In State v. Morgan, 144 Mo. App. 1. c. 40, it is said:

"'The rule is well settled that a county court may revise or rescind an order at the term or session at which such order is made provided this be done before any rights have accrued under the order.' (Italics ours.)"
(First emphasis ours.)

In view of the holding of the court above quoted, and in view of the fact that you state in your letter that the Arkansas-Missouri Power Company has started construction of its electric line, it is clear that the County Court cannot now revoke or rescind its order. Of course, the County Court may make a similar order granting its assent for the erection of poles and the laying and maintaining of pipes, conductors, mains and conduits through, on, under or across the public roads or highways of Ripley County, by the Ozark Border Electric Company.

CONCLUSION

It is the opinion of this department that the County Court of Ripley County has no power to revoke or rescind its order giving assent to the construction of poles, conductors, guy wires, etc., in Ripley County by the Arkansas-Missouri Power Company.

Respectfully submitted,

C. B. BURNS, Jr.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

CBB:HR