

LOCATION AND ESTABLISHMENT  
OF ROADS:

The county court is the proper forum for the commencement of a proceeding for the location and establishment of a county public road.

May 5, 1950

5/6/50

Honorable Friend B. Greene  
Prosecuting Attorney  
Shannon County  
Eminence, Missouri



Dear Sir:

We have your recent letter in which you request an opinion of this department, which request reads as follows:

"The proper form in which to file petition for the location and establishment of County Public Roads."

Section 8473, R.S.A. Mo. 1939, is, in part, as follows:

"Applications for the establishment of all public roads, shall be made by petition to the county court. \* \* \*"

We are of the opinion that the above quoted portion of said section is conclusive on the question presented by you and clearly shows that the county court is the proper forum in which to file a petition for the location and establishment of county public roads.

This statute was so construed by the Supreme Court of Missouri in the recent case of Lane v. Pankey, 221 S.W.2d. 195. In that case a petition had been filed in the county court for the establishment of a county road and the county court was about to assume jurisdiction of a condemnation proceeding for the purpose of acquiring some right-of-way required for said road. The issue in the case was whether or not the establishment of a road involved performance of a judicial rather than of an administrative function, and it was contended that in view of the fact that under Article VI, Section 5 of the 1945 Constitution, the enumerated powers of the county court are purely administrative and are not judicial, the county court could neither establish a road nor exercise jurisdiction in a condemnation proceeding for the acquisition of right-of-way therefor.

Hon. Friend B. Greene

The Supreme Court held in substance that the mere establishment of a county road is an administrative function of which the county court has jurisdiction but that the determination of the amount which constitutes just compensation for a right-of-way needed for the road is a judicial question as to which the county court lacks jurisdiction. The following is a pertinent quotation from the opinion of the court in the above cited case:

"\* \* \*A county court can no longer adjudge the compensation to be paid for lands to be taken for road purposes nor render judgment divesting title from the owners thereof. But such court may take all statutory steps to determine the necessity, location, width and type of construction of public county roads, to determine whether same shall be constructed in whole or in part at county expense, and, when title has been legally acquired, to perform the administrative functions of supervising the construction and maintenance of such roads."

It is clear from the above quoted language of the Supreme Court that the above quoted portion of the statute is held by the Supreme Court to be in full force and effect since the adoption of the 1945 Constitution.

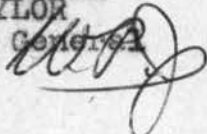
CONCLUSION

We are accordingly of the opinion that the county court is the proper forum in which to file a petition for the location and establishment of county public roads.

Respectfully submitted,

APPROVED:

J. E. TAYLOR  
Attorney General



SMW:mw

SAMUEL M. WATSON  
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