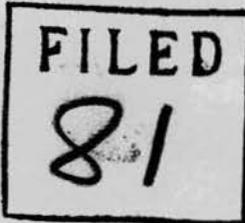


FARM TO MARKET ROADS; In the construction of a farm-to-market road the county court does not have discretion as to whether or not the road shall be built; neither the state nor county is liable for the cost of condemnation proceedings; where a farm-to-market road extends over road which has been maintained by a special road district, the special road district is not obligated to pay the expenses of condemnation and survey.



February 26, 1951

2-28-51

Honorable William E. Seay
Prosecuting Attorney of Dent County
Salem, Missouri

Dear Sir:

Your recent request for an official opinion has been assigned to me to answer.

Your opinion request is as follows:

"The county court of Dent County would like an opinion as to the following:

"(a) in the construction of a farm-to-market road, does the county court have discretion as to whether or not the road is to be built?

"(b) in the construction of a farm-to-market road does the state or the county pay the condemnation costs?

"(a) in the construction of a farm-to-market road where the farm-to-market road extends over road which is now maintained and will be maintained by the special road district must the special road district pay the attendant expenses of condemnation and survey?"

Section 230.010, RSMo 1949, provides for the appointment of a county highway commission of four members.

Section 230.020, RSMo 1949, directs the county court to appoint the members of this commission; states the terms of appointees; age and residential requirements of such appointees; and the time and manner in which the commission shall organize.

Honorable William E. Seay

Section 230.030, RSMo 1949, sets forth the powers and duties of the commission, and states:

"It shall be the duty of the county highway commission and said commission shall have the power to locate, lay out, designate, construct and maintain, subject to approval of the state highway commission, a system of county highways not exceeding in the aggregate at any given time one hundred miles in any county, by connecting by the most practical route the several centers of population in the county, in such manner as to afford a connection with such of said centers of population as are not now located on any state highway with such state highway, and so as to afford, as nearly as may be done, a connection with county highways connecting the centers of population of adjoining counties, to the end that all parts of the county shall be connected with the state highway system as now laid out and designated, and that the inhabitants of the county generally shall have and enjoy a system of highly improved farm-to-market roads. If any part of this county one hundred mile highway system has been, or shall hereafter be taken over by the state highway commission and become a state highway, then an equal amount of new mileage, to take the place thereof, may be placed in the county one hundred mile system."

Section 230.040, RSMo 1949, states:

"Before construction of any county highway located, laid out, and designated as in this chapter authorized and provided, or any money, in excess of the cost of such location and designation shall be expended thereon, it shall be the duty of county highway commission to submit such location to the state highway commission for its approval, and, upon approval of such location by the state highway commission, the county highway commission shall proceed to procure the right of way for said county highways, said right of way to be of the standard width required by the state

Honorable William E. Seay

highway commission for secondary highways, not less, however, than sixty feet wide, and secure title in fee to such right of way by deed of conveyance, or by judgment of a court of competent jurisdiction through condemnation. In all cases where condemnation is necessary, the proceedings shall be in the name of the county highway commission, and otherwise the same as now, or hereafter, provided by law for condemnation of land by the state highway commission for right of way for state highways."
(Underlining ours)

From the above it will be seen that the answer to your first question is that the county court does not have discretion as to whether or not a farm-to-market road shall be built, but that this power is vested in the county highway commission, subject to the approval of the state highway commission.

By the underlined portion of Section 230.040, RSMo 1949, quoted above, it will be seen that condemnation proceedings are brought in the name of the county highway commission. It therefore follows that neither the county nor the state would be liable to pay the cost of such proceedings because there is no statute requiring either the state or county to pay such condemnation costs.

Section 230.060, RSMo 1949, states:

"Whenever any county highway laid out and designated under the provisions of this chapter shall be over and along the route of any existing highway, it shall be the duty of the county court, or other board or commission, having jurisdiction over such highway, to convey the same to the county highway commission, who shall thereafter have control and supervision thereover, and whenever any such county highway shall be laid out and designated through any special road district, or in counties under township organization, it shall be the duty of the commissioner of such special road district, or of the treasurer of such township, to pay over to the county highway commission, such

Honorable William E. Seay

proportion of the total road revenue arising therein as the mileage of said county highway within said special road district, or township, shall bear to the total number of road mileage therein."

From the above, it will be seen that the answer to your third question is "No", since, by reason of the statute quoted above, it is made the duty of the treasurer of such township, to pay over to the county highway commission, such proportion of the total road revenue arising therein as the mileage of said county highway within said special road district, or township, shall bear to the total number of road mileage therein.

CONCLUSION

In the construction of a farm-to-market road the county court does not have discretion as to whether or not the road shall be built; neither the state nor county is liable for the cost of condemnation proceedings; where a farm-to-market road extends over road which has been maintained by a special road district, the special road district is not obligated to pay the expenses of condemnation and survey.

Respectfully submitted,

HUGH P. WILLIAMSON
Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney General

HPWab