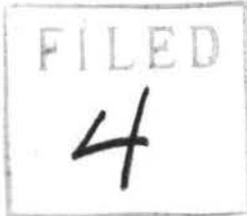


CONDEMNATION FOR RIGHT OF WAY:) It is the duty of the Prosecuting Attorney
For County Roads:) to represent the county in condemnation of
Duty of Prosecuting Attorney:) right-of-way for establishment of county
King Road Bill:) road.



January 8, 1953

1-9-53

Hon. Harold B. Bamburg
Acting Prosecuting Attorney
Pettis County
Sedalia, Missouri

Dear Mr. Bamburg:

We have your recent letter in which you request an opinion of this department. Your letter in part is as follows:

"I would like to know if it is the duty of the prosecuting attorney to represent the County in a condemnation suit for a King Bill Road, or if this is a matter to be handled by a private attorney."

The so-called King Road Bill is set forth in Section 231.440, RSMo 1949 to Sections 231.500 inclusive. These sections provide for the improvement, construction, reconstruction and restoration of county roads. The law pertaining to the process of opening and establishing county roads is set forth in the statutes and the part of such law pertaining to the duties of prosecuting attorneys for right of way for county roads is set forth in Section 228.100 RSMo 1949 which we quote as follows:

"If it appears that any person through whose lands such proposed road should run has failed or refused to relinquish the right of way, or is not willing to take the amount of damages offered him by the court or petitioners, or both, or in case any such owner is incapable of contracting or is a nonresident of this state, and it further appears to the county court that the proposed road is of such great public utility as to warrant its establishment, the county court shall order the road established and shall direct the prosecuting attorney of the county to

Hon. Harold B. Bamburg

institute proceedings in the name of the county
in the circuit court for the purpose of con-
demning such lands. Such proceedings shall be
instituted and conducted by said prosecuting
attorney under the provisions of chapter 523,
RSMo 1949. (L. 1949 p. 551 § 8476)"

(Underscoring ours)

CONCLUSION

We are accordingly of the opinion that it is the duty of the Prosecuting Attorney to represent the county in condemnation proceedings for the obtaining of right-of-way necessary for any county road.

Respectfully submitted

SAMUEL M. WATSON
ASSISTANT ATTORNEY GENERAL

APPROVED:



J. E. TAYLOR
ATTORNEY GENERAL

SMW:A