

MISSOURI STATE HIGHWAY COMMISSION:
STATE HIGHWAYS:

Missouri State Highway Commission has sole discretion in the location of state highways and may exact from political subdivisions contributions for the purchase of right-of-way therefor.



March 19, 1954

Honorable E. Gary Davidson
Missouri State Senate
7321 Murdock
Shrewsbury 19, Missouri

Dear Sir:

Reference is made to your request for an official opinion of this department reading as follows:

"The State Highway Commission of Missouri, under agreement with the County of St. Louis and the City of St. Louis, has surveyed and planned certain thoroughways or expressways as part of the State's primary highway system to be in and through St. Louis County and St. Louis City. These projects are to be constructed with State and Federal-aid urban funds, the latter made available by an act of Congress to expedite traffic in metropolitan areas throughout the United States.

"It is my understanding now that the State Highway Commission refuses to construct these necessary highways in St. Louis County and the City of St. Louis, after having planned them, unless the political subdivision (St. Louis County and St. Louis City) through which they will pass will pay in money, a sum equivalent to one-half of the cost of acquiring the right-of-way.

"In this connection, I would appreciate your opinion on these questions:

"1. May the State Highway Commission, in its discretion in reference to the expenditure of constitutional public highway funds

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and Federal-aid funds, demand and require an additional sum of money from a political subdivision of the State of Missouri as a condition to the location and construction of a necessary and essential highway into and through such political subdivision?

"2. If these requirements and demands are unauthorized and unlawful, what remedy is available to such political subdivision to compel the State Highway Commission to administer the constitutional road funds and Federal-aid funds in a manner consonant to law?"

The authority of the Missouri State Highway Commission was greatly extended by the adoption of the Constitution of 1945.

We direct your attention to the following portion of Section 29, Article IV of the organic law of this state:

"* * * It shall have authority over and power to locate, relocate, design and maintain all state highways; and authority to construct and reconstruct state highways, subject to limitations and conditions imposed by law as to the manner and means of exercising such authority; and authority to limit access to, from and across state highways where the public interest and safety may require, subject to such limitations and conditions as may be imposed by law." (Emphasis ours.)

We think it pertinent at this point to call to your attention the constitutional language which has been underscored. It appears therefrom that the people of Missouri have reserved to their representatives constituting the General Assembly the power to impose limitations and conditions upon the exercise of certain powers to be exercised by the State Highway Commission. However, it will be noted that such was not done with respect to the delegated authorization to such Commission to locate, relocate, design and maintain highways.

This broad constitutional grant of authority to the State Highway Commission has been recognized by the appellate courts

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of this state. We direct your attention to State ex rel. v. Curtis, 222 S.W. (2d) 64, l.c. 68:

"* * * The power to locate a state highway, to determine its width, type of construction and the extent of land necessary for economical and proper construction are vested in the sound discretion of the State Highway Commission, uncontrolled by the courts except to compel strict compliance with the statutes and to prevent the taking of private property for a private or non-public use.* * *"

Narrowing this opinion at this point down to the precise question which you have presented under paragraph 1, we believe that some of the language found in Subsection (2) of Section 30, Article IV of the Constitution may be of some assistance in determining the meaning to be accorded the various constitutional provisions relating to the State Highway Commission. The quoted subsection reads in part as follows:

"* * * except that the commission may, in its discretion, repay, or agree to repay, any cash advance by a county or subdivision to expedite state road construction or improvement; * * *."

The quoted language indicates that the State Highway Commission has power to use funds available to it for the purpose of repaying, or entering into an executory contract to repay, counties or other political subdivisions cash which has been advanced for the purpose of expediting road construction. It seems therefrom if such power has been delegated to the Commission that in the exercise of its discretion such Commission may require as a condition precedent to the location of a state highway in a particular location that any county or other political subdivision interested in such location pay a portion of the costs of acquiring necessary rights-of-way. Absent fraud or arbitrariness on the part of the State Highway Commission the courts have recognized their inability to coerce through appropriate legal action the State Highway Commission into taking any particular steps with respect to the location of state highways. In disposing of a contention that a refund was properly due to political subdivisions immediately upon the ascertainment of the amount thereof the Supreme Court of Missouri said in

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State ex rel. v. State Highway Commission, 163 S.W. (2d) 948,
l.c. 954:

"* * * The refund is to be allowed by the commission. Hence it is the commission which must decide this necessary question of fact. The amount determined under the statutory rule and the time of payment lie wholly within the jurisdiction of the commission. State ex rel. State Highway Commission v. Thompson, 331 Mo. 321, 53 S.W. 2d 273. When jurisdiction to find and determine facts is vested by law in an administrative tribunal the courts may not substitute their judgment for that of the commission. Howlett v. Social Security Commission, 347 Mo. 784, 149 S.W. 2d 806, loc. cit. 809; Hughes v. State Board of Health, 345 Mo. 995, 137 S.W. 2d 523.* * *"

From our examination of the constitutional provisions relating to the State Highway Commission and from the cases decided by the appellate courts of this state with respect to the powers of such commission, we are persuaded to the belief that absent fraud or arbitrariness the State Highway Commission has the sole discretion with respect to the location of state highways. Having such sole discretion it does not seem to us that attaching as a condition precedent to the location of a state highway in any particular location, the acquisition in whole or in part of the rights-of-way necessary therefor, either directly by a political subdivision or through money supplied for that purpose by such political subdivision, is to be held constructively fraudulent or arbitrary as a matter of law.

Having reached the conclusion we have with respect to your first question no necessity arises to pass upon the further matters submitted in question 2.

CONCLUSION

In the premises we are of the opinion that the State Highway Commission may reasonably require that a political subdivision either procure the necessary rights-of-way or supply

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the money required to acquire the same or a portion thereof, as a condition precedent to the location and construction of a particular state highway.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Will F. Berry, Jr.

Yours very truly,

JOHN M. DALTON
Attorney General

WFB:VLW