

COUNTY COURTS:  
ELECTRICAL COOPERATIVES:  
RIGHT OF WAY:

(1) An electrical cooperative which maintains poles and lines on public right of way along present roads which are to be widened, but which are not within the state highway system, must remove and relocate such poles and lines on order from the county court or county highway engineer; and the electrical co-

operative must bear the expense of such removal and relocation.

(2) An electrical cooperative which maintains poles and lines on private property along present roads which are to be widened does not have to remove and relocate the poles and lines unless and until the county or state acquires the cooperative's vested interests by way of easement in the private property either by purchase or by condemnation.

September 19, 1955

FILED 18

Honorable Joe Collins  
Prosecuting Attorney  
Cedar County  
Stockton, Missouri



Dear Sir:

Your request for an opinion reads as follows:

"In order to build and construct roads under its ten-year road program the State Highway Department has asked that R.E.A. lines and poles maintained along right-of-way of present roads be removed, even though some of the poles are on private property.

"The County of Cedar and R.E.A. entered into an agreement, evidenced by Court Order, a copy of which is enclosed.

"Would you please give me your opinion under Sections 394.080-393.010 - and 229.100 R.S.Mo. 1949, and any other applicable sections; whether or not the said agreement as entered into by Cedar County and R.E.A. now requires R.E.A. to remove these poles and lines at their expense, and in your opinion does 'along public roads' as now in the agreement, include the poles near present roads, even though on private property, if they would interfere with the new roads under the ten-year program; and if so, are the provisions of the agreement shown in the Court Order constitutional and lawful?

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"Would you please mail me two copies of your opinion.\* \* \*"

You also stated in a telephone conversation with this office on the 29th, that the roads referred to in your request are not now a part of the state highway system, but were to be widened and then become a part of the state highway system by the State Highway Commission taking control over them. You also stated that they were to be widened by the acquisition of right of way and the cost of such right of way was to be borne by the county or someone else not specified who would purchase it and then deed it over to the State Highway Commission. You further stated that some of the electrical cooperative's poles and lines are now on public right of way along these roads and some are on private property, which private property will later be acquired and be a public right of way.

Your questions then were, one, whether these poles and lines along the public right of way and along the private property have to be moved by the electrical cooperative, and second, who is to bear the expense of moving and relocating these poles and lines?

Subsection 10 of Section 394.080, RSMo 1949, reads as follows:

"Powers of co-operative.--A co-operative shall have power \* \* \*

"(10) To construct, maintain and operate electric transmission and distribution lines along, upon, under and across all public thoroughfares, including without limitation, all roads, highways, streets, alleys, bridges and causeways, and upon, under and across all publicly owned lands, subject, however, to the requirements in respect of the use of such thoroughfares and lands that are imposed by the respective authorities having jurisdiction thereof upon corporations constructing or operating electric transmission and distribution lines or systems; \* \* \*"

Thus this subsection which authorizes an electrical cooperative to construct and maintain transmission lines along the roads, highways, etc., of the state makes such construction and maintenance subject to the requirements of the authorities having jurisdiction over such roads, highways, etc. Thus it becomes necessary to ascertain which

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state authority or agency, or political subdivision has jurisdiction over the construction and maintenance of these transmission lines along the roads referred to in your request. In State v. Kansas City Power and Light Company, 105 S.W. 2d 1085, the Kansas City Court of Appeals stated at page 1088:

"(7) The opinion does not hold either directly or inferentially that there is conflict 'in the authority of two separate state agencies.' The authority of county courts and highway engineers is by section 7924 limited to public roads which are not a part of the state highway system. The authority of the state highway commission, in so far as the location of the lines of utilities is concerned, is limited by section 8109 to roads which are a part of the state highway system. There is no conflict in the authority of these agencies."  
(Emphasis supplied.)

Thus as you state in your request these roads are not at present within the state highway system. The county has jurisdiction over the construction and maintenance of lines, poles and fixtures along such roads which are on the public right of way. This jurisdiction of the county is set out in Section 229.100, RSMo 1949, which states 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."

This jurisdiction was exercised by the county when it authorized the electrical cooperative to establish and maintain lines and poles along the roads, Cedar County, by the county

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court, in exercising such jurisdiction attached conditions to such maintenance of poles and lines along the roads of Cedar County. These conditions are set out in the order by the Cedar County Court which authorizes the electrical cooperative to erect and maintain lines and poles in Cedar County. The conditions are:

"\* \* \* Provided such lines and fixtures and appurtenances thereto shall not be so placed, constructed or maintained as to obstruct the use of roads or highways for travel, and shall not be so placed, constructed or maintained as to interfere with the maintenance and repair of such roads or highways or the construction of additional roads or highways, or the natural flow of waters: and provided further that no poles shall be erected under such reasonable rules and regulations as may be prescribed and promulgated by the County Highway Engineer with the approval of the County Court."

One of the conditions set out in the order by the Cedar County Court was that lines, fixtures, and appurtenances shall not be placed, constructed, or maintained so as to interfere with the maintenance and repair of such roads or highways. It is the belief of this office that the widening of a highway comes within the terms of maintenance and repair of such roads or highways. Thus, it would seem that when these poles, lines and fixtures are on public right of way, and they would obstruct the widening of the highway then in accordance with the order by the Cedar County Court the electrical cooperative must remove these poles and lines so as not to obstruct the widening of the road. Thus it is the opinion of this office that the electrical cooperative must remove and relocate these poles, lines and fixtures which are on the public right of way along present roads, which roads are not a part of the state highway system, in accordance with the conditions set out in the order of the Cedar County Court. And the electrical cooperative must remove and relocate such poles and lines which are on public right of way along roads within Cedar County which are not part of the state highway system when such removal and relocation is necessary for the widening of the aforesaid roads, when ordered to do so by the county court or county highway engineer. Since the electrical cooperative is obligated by the conditions in the order made by the Cedar County Court to remove and relocate poles, lines and fixtures

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it seems logically to follow that the electrical cooperative must bear the expense of removing and relocating such poles and lines and fixtures which are on public right of way.

The next question is must the electrical cooperative remove and relocate its poles which are on private property, which private property will later become public right of way along present roads within or without the state highway system. Since the electrical cooperative has an easement, whether oral or written, in the private property on which its poles and lines stand it has a vested interest in the private property and the electrical cooperative is not required to remove the poles and lines unless and until the county or state acquires this vested interest of the cooperative in the property, either by purchase or condemnation.

#### CONCLUSION

It is the opinion of this office that:

(1) An electrical cooperative which maintains poles and lines on public right of way along present roads which are to be widened, but which are not within the state highway system, must remove and relocate such poles and lines on order from the county court or county highway engineer; and the electrical cooperative must bear the expense of such removal and relocation; and,

(2) An electrical cooperative which maintains poles and lines on private property along present roads which are to be widened does not have to remove and relocate the poles and lines unless and until the county or state acquires the cooperative's vested interests by way of easement in the private property either by purchase or by condemnation.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Harold L. Volkmer.

Yours very truly,

John M. Dalton  
Attorney General