DEDICATION:
PUBLIC ROADS:
KING BILL:
COUNTY COURT:

Public roads may be established by dedication and acceptance so as to qualify for improvement, construction, etc., under Section 231.460, RSMo 1949, the King Bill.

FILED
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October 20, 1955

Honorable Frank D. Connett, Jr.
Prosecuting Attorney
Buchanan County
St. Joseph, Missouri

Dear Mr. Connett:

This is in response to your request for opinion dated August 23, 1955, which reads as follows:

"This office would like to have your opinion on the following problem.

"In the summer of 1949, a man by the name of Whitman who owned a tract of land in Buchanan County just outside the limits of the City of St. Joseph, set up a sub-division by grading out some roads over an area about the size of two blocks. In December of 1950, Whitman filed with the Recorder of Deeds a plat and dedication of the streets and alleys in this sub-division.

"From then, until recently, various people, on occasions, drove over these streets when they came to look at some of the lots for sale by Whitman. No one used the streets to go any place other than to look at Whitman's lots because these roads led to no place else.

"This spring Whitman made an application for the roads to be graveled by the county under King Road Bill construction. (Section 231.460 R.S. Mo.1949). This was approved by the Presiding Judge of the County Court and the King Bill project was set up and approved by the state. The roads were shaped up and ditches cut in by the county and, under the King Bill contract, the roads were graveled.

"We now discover there was never any compliance with Section 228.020 R.S.Mo.1949 for the establish-

ment of public roads.

"Our question is this: was it lawful for the County Court to expend public monies, labor and material on these roads without them ever having been established by the County Court? If it was unlawful, what can be done about it now?

"Should the application for the establishment of such road now be set up or may the county recover the value of its services and materials from Mr. Whitman?

"The case of Hays v. Kansas City, 242 S.W. 411-13, is what has led us to believe that only the County Court can establish a public road to be maintained by public funds."

First, it might be well to point out the definition of "county roads" as contained in Section 231.460, RSMo 1949:

"3. 'County roads' as used in sections 231.440 to 231.500 means all public roads located within any county, except roads or highways constructed or maintained as state roads or highways, and except roads, streets or highways in incorporated villages, towns or cities."

From that we come to the precise question which is whether the type of road outlined in your opinion request is a "public road" which may be improved, constructed, etc., under the provisions of the so-called King Bill.

The existing confusion has apparently arisen from the following statement contained in Hayes v. Kansas City, 294 Mo. 655, 242 S.W. 411, 414:

"(3) 3. In view of the above, it is not necessary to discuss the questions raised in the briefs of the parties with respect to the rights of Jackson county in such street. However, we may say that at the date of this attempted dedication, the county courts

> possessed the exclusive power to establish new county roads, and they could only acquire jurisdiction to do so upon the petition of a specific number of householders. It was shown that the county court had never acted with respect to the street in controversy, and no individual citizen has the right, acting alone, to establish a public highway. Foster v. Dunklin, 44 Mo. 216; Snoddy v. Pettis County, 45 Mo. 361; Zeibold v. Foster, 118 Mo. 349, loc. cit. 354, 24 S. W. 155, State ex rel. Mermod v. Heege, 39 Mo. App. 49."

That statement was obviously dictum, therefore, it is not necessary to determine whether, considering the facts of the case, it is a correct statement of the law or not. If the court had contented itself with holding, as it properly did, that there had never been any acceptance of the offer of dedication by Jackson County, or that there was not even any offer to Jackson County by virtue of the dedication which could be accepted by it, this confusion would not have arisen.

We shall not take the space necessary to point out what the holdings of the court were in the cases cited above in support of the above quoted statement, but let it suffice to show by other and later cases that "public roads," may be established by means other than petition and order of the county court.

As contrary to the statement in the Hayes case, we direct your attention to that part of Garbee v. St. Louis-San Francisco Ry. Co., 220 Mo. App. 1245, 290 S.W. 655, 658, where the court said:

> "* * * A road may be given the status of a public road without having been so established by petition and court order.* * *"

In Cochran v. Wilson, 287 Mo. 210, 227, 219 S.W. 1050, the court said:

> "It is elementary that land may become a public highway by either dedication, condemnation, or prescription."

In Gilleland v. Rutt, Mo. App., 63 S. W. 2d 199, 201, there is the following statement:

> "It has long been settled law in Missouri that the public may acquire the right to the use of a road or easement over the land of another, when such road has been established by condemnation, by dedication to public use by some unequivocal act, or from long use of the road as such by the public acquiesced in by the owner, and by adverse occupancy and use of the same by the public for a period of time equal to that prescribed by the statute of limitations (Mo. St. Ann. Sec. 850) for the purpose of bringing an action of ejectment. State v. Walters, 69 Mo. 463, loc. cit. 465; State v. Wells, 70 Mo. 635, Longworth v. Sedevic, 165 Mo. 230, 65 S.W. 260.
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> "In Borchers v. Brewer, 271 Mo. loc. cit. 143, 196 S. W. 10, 12, the Supreme Court said: 'If the donor's acts are such as indicate an intention to appropriate the land to the public use, then, upon acceptance by the public, the dedication becomes complete.' It has been held in numerous cases that the intent to dedicate may be implied from the circumstances (Johnson et al. v. Ferguson et al., 329 Mo. 363, 44 S.W. (2d) 650, 653; City of Hardin v. Ferguson, 271 Mo. loc. cit. 414, 196 S.W. 746) and, in others, that acceptance by the public may be implied from long and continued use by the public. City of Hardin v. Ferguson, 271 Mo. loc. cit. 414, 196 S.W. 746; Heitz v. City of St. Louis, 110 Mo. 618, 19 S. W. 735; McGrath v. Nevada, 188 Mo. loc. cit. 107, 86 S. W. 236; Curran v. City of St. Joseph, 264 Mo. loc. cit. 659, 175 S.W. 584; Benton v. City of St. Louis, 217 Mo. loc. cit. 705, 118 S. W. 418, 129 Am. St. Rep. 561."

Duenke v. St. Louis County, 358 Mo. 91, 213 S.W. 2d 492, was a case which involved roads platted in an unincorporated area. The court said at S.W., l.c. 495:

> "* * By virtue of the recorded plat the county would acquire title to land within the designated boundaries of a public road for use as such.* * *"

It was further held that such a road is a "public road" within the meaning of the section authorizing an appeal from a judgment of a county court vacating "any public road."

The case most nearly comparable to this one is Evans v. Andres, 226 Mo. App. 63, 42 S.W. 2d 32, 35, where it was held:

> "* * *The streets in platted towns become public highways by dedication with the recording of the plat. No order of the county court accepting such dedication is required."

However, in Johnson v. Ferguson, 329 Mo. 363, 44 S.W. 2d 650, 653, the court said:

> "While an acceptance is essential to a complete and irrevocable common-law dedication, 8 R.C.L. 898, Sec. 22; 18 C.J. 22, Sec. 67; Landis v. Hamilton, 77 Mo. 554; Kemper v. Collins, 97 Mo. 644, 11 S.W. 245; Baker v. Vanderburg, 99 Mo. 378, 12 S.W. 462; Vossen v. Dautel, 116 Mo. 379, 22 S. W. 734, under the authorities the acceptance may be by formal action, by public work thereon, by use by the public, or by building upon or otherwise improving abutting property in reliance thereon.* * *"

We believe it clear, therefore, that a "public road" within the meaning of Section 231.460, RSMo 1949, may be created by dedication and acceptance, and it is not required that such roads be established by the method provided in Section 228.020, RSMo 1949, in order to be qualified under the King Bill.

Having thus answered your first question it is unnecessary to answer the remaining questions submitted.

CONCLUSION

It is the opinion of this office that a public road may be established by dedication and acceptance so as to qualify

for improvement, construction, etc., under Section 231.460, RSMo 1949, and it is not necessary that such roads be established by petition and order of the county court.

The foregoing opinion, which I hereby approve, was prepared by my assistant, John W. Inglish.

Yours very truly,

John M. Dalton
Attorney General

JWI:vlw,hw