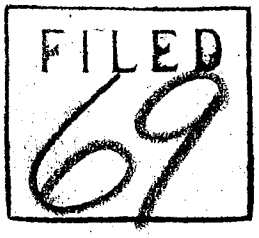
MISSOURI STATE PARK BOARD: Missouri State Park Board unauthorized to
TITLE: acquire right of way easement from Highway
REAL ESTATE: 66 to Meramec State Park.



June 25, 1956

Missouri State Park Board
Jefferson Building
Jefferson City, Missouri

Attention: Mr. Joseph Jaeger, Jr.
Director of Parks.

Gentlemen:

This will acknowledge receipt of your request for an opinion which reads:

> "I should like to obtain from you a legal opinion as to a certain procedure in land purchase to determine whether or not the Missouri State Park Board is within its legal authority to do so.
>
> "The situation is at Meramec State Park whereby we would like to obtain a right of way for a new highway entrance off of U.S. 66. The question is, are we within our legal power to do so under the method of appropriations for the Missouri State Park Board."

In rendering this opinion we shall first determine if the Missouri State Park Board can acquire such a right of way. If it may legally acquire such right of way then it will be necessary to determine if there is sufficient appropriation. However, if it cannot do this then the request as to the sufficiency of the appropriation will not require our consideration at least for the time being.

The authority of the Missouri State Park Board to acquire land is found under Section 253.040, MoRS Cum. Supp. 1955, which reads:

Missouri State Park Board

> "1. The board is hereby authorized to accept or acquire by purchase, lease, donation, agreement or eminent domain, any lands, or rights in lands, sites, objects or facilities which in its opinion should be held, preserved, improved and maintained for park or parkway purposes. The board is authorized to improve, maintain, operate and regulate any such lands, sites, object or facilities when such action would promote the park program and the general welfare. The board is further authorized to accept gifts, bequests or contributions of money or other real or personal property to be expended for any of the purposes of this chapter; except that any contributions of money to the state park board shall be deposited with the state treasurer to the credit of the state park fund and expended upon authorization of the state park board for the purposes of this chapter and for no other purposes.
>
> "2. In the event the right of eminent domain be exercised, it shall be exercised in the same manner as now or hereafter provided for the exercise of eminent domain by the state highway commission."

The question boils down to whether or not said Board by acquiring said right of way is doing so for the purpose of holding, preserving, improving and maintaining it for park or parkway purpose.

Under Section 253.010, MoRS Cum. Supp. 1955, we find the following definitions of words used in Chapter 253:

> "(1) 'Land,' upland, land under water, the water itself and every estate, interest and right, legal or equitable in land or water;
>
> "(2) 'Park,' any land, site or object primarily of recreational value or of cultural value because of its scenic, historic, prehistoric, archeologic, scientific, or other distinctive characteristics or natural features;
>
> "(3) 'Parkway,' an elongated area of park land, usually contiguous to a pleasure driveway and often containing recreational areas.

"(4) 'Board,' The Missouri State Park Board created by this chapter."

It is difficult to conceive how the acquiring of a right of way from Highway 66 to Meramec State Park, to be used only for the purpose of ingress and egress from the State Park to said Highway, could be construed as holding, preserving and improving same for park, or parkway purposes, as park and parkway are hereinabove defined.

Section 27, Article I, Constitution of Missouri, authorizes the state to acquire by eminent domain such property or rights in property in excess of that actually occupied by the public improvement or used in connection therewith as may be reasonably necessary to effectuate the purposes intended. However, this so-called excess property, to which you refer in said amendment, can only be acquired in such manner and under such limitations as may be provided by law. We are not able to find any statutory authorization for acquiring land for a right of way from Highway 66 to said Meramec State Park.

There are several rules of construction that might be applicable in construing the Missouri State Park Board Act. First, a primary rule of statutory construction is to ascertain the lawmakers' intent from the words used, if possible, and then give the language used its plain and rational meaning and promote its objects. Laclede Gas Co. Vs. City of St. Louis, 253 S.W.(2d) 832, 363 Mo. 842.

Another well established rule of construction is that a statutory grant of power carries with it necessary implied power to render effective that power expressly granted and that which is implied in a statute is as much a part of it as what is expressed. State ex rel. Ferguson vs. Donnell, 163 S.W.(2d) 940, 349 Mo. 975. However, we are of the opinion the foregoing rule on implied power is not applicable in this instance for the reason that Chapter 253 MoRS Cum. Supp. 1955, requires no implied power to carry out those express powers granted therein. Furthermore, it would have been an easy matter for the General Assembly to have clearly included such authority under Chapter 253 had it so desired the Board to have that authority. Since this was not done this department cannot read it into the law. As stated in Jack Frost Abattoirs, Inc. vs. Steinbach, 274 S.W.(2d) 588, courts may not change the meaning of a plain and unambiguous statute.

Under the new Missouri State Park Board Act and the foregoing rules of statutory construction, it is apparent that the Legislature never intended to vest any authority in the Missouri State Park Board

to acquire land for such right of way which is located outside of a Missouri state park.

CONCLUSION

Therefore, it is the opinion of this department that the Missouri State Park Board has no authority to acquire such land for a right of way from Meramec State Park to Highway 66. Furthermore in view of the foregoing conclusion we deem it unnecessary to pass upon the sufficiency of your appropriation for acquiring such land.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. Aubrey R. Hammett, Jr.

Yours very truly,

John M. Dalton
Attorney General