

HIGHWAY COMMISSION: State Highway and its agents not liable for tres-  
TRESPASSING: passing when entering upon private property for  
SURVEYS: purpose of making preliminary survey.



June 4, 1956

Honorable Charles A. Weber  
Prosecuting Attorney  
Ste. Genevieve, Missouri

Dear Mr. Weber:

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

"I would like to have an official opinion based on the following facts:

"The survey for the relocation of U. S. Highway No. 61 is now being made in Ste. Genevieve County. Several land owners have contacted this office regarding the surveyors who are making this survey in an effort to have them prosecuted for trespassing. It is my contention that the last sentence of Sub. Section 13 of Section 227.120 V.A.M.S. of 1949 gives the State Highway Commission and its agents the authority to trespass upon private property in determining the route for this particular highway.

"Is my contention correct?"

Section 227.120, MoRS 1949, referred to in your request, reads, in part:

"The state highway commission shall have power to purchase, lease, or condemn, lands in the name of the state of Missouri for the following purposes when necessary for the proper and economical construction and maintenance of state highways:

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"13. Acquiring lands for any other purpose necessary for the proper and economical construction of the state highway system for which the commission may have authority granted by law. If condemnation becomes necessary, the commission shall have the power to proceed to condemn such lands in the name of the state of Missouri, in accordance with the provisions of chapter 523, RSMo 1949, insofar as the same is applicable to the said state highway commission, and the court or jury shall take into consideration the benefits to be derived by the owner, as well as the damage sustained thereby. The state highway commission also shall have the same authority to enter upon private lands to survey and determine the most advantageous route of any state highway as granted, under section 388.210, RSMo 1949, to railroad corporations."

Section 388.210, MoRS 1949, referred to in the foregoing statute reads, in part:

"Every corporation formed under this chapter shall, in addition to the powers herein conferred, have power:

"(1) To cause such examination and survey for its proposed railroad to be made as may be necessary to the selection of the most advantageous route, and for such purpose, by its officers, agents or servants, to enter upon the lands or waters of any person; but such corporation shall be liable and subject to responsibility for all damages which shall be done thereto;"

The basic rule of construction of a statute is first to seek the lawmakers' intention and, if possible, to effectuate that intention. *Laclede Gas Co. vs. City of St. Louis*, 253 S.W.(2d) 832, 363 Mo. 842.

Another well established rule of statutory construction is that when the meaning of a statute is plain and unambiguous there is no room for statutory construction. *Steggall vs. Morris*, 258 S.W.(2d) 577, 363 Mo. 1224.

It is evident under Section 227.120, supra, that the Legislature has specifically provided that the State Highway Commission shall have the same authority to enter upon private lands to make surveys for

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proposed state highways the same as is provided for railroad corporations under Section 388.210, supra. The authority granted under the latter statute is that such corporations may, in addition to other powers granted therein, enter upon lands or waters of any person for the purpose of making a survey for a proposed railroad.

The law has been well established in this state for a long time that the Legislature could authorize such entries on private property for making a preliminary examination and survey. See Walther vs. Warner, 25 Mo. 277, l.c. 289 and 290.

#### CONCLUSION

It is the opinion of this department that you are correct in holding that the State Highway Commission and its agents are vested with authority to enter upon private property for the purpose of making a preliminary survey for locating a highway and in so doing they cannot be prosecuted for trespassing thereon.

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

ARH:mw