

CONDEMNATION: Iron County cannot legally pay to a
STATE HIGHWAY COMMISSION: landowner additional compensation for
his land which was condemned by the
COMPENSATION: state highway commission for a state
road in an action in which final
COUNTY COURTS: judgment of condemnation was entered
on September 5, 1957.

July 16, 1959

Honorable George Q. Dawes
Prosecuting Attorney
Iron County
Ironton, Missouri



Dear Sir:

Your recent request for an official opinion reads:

"I would like to have an official opinion on a problem presented to me by the County Court of Iron County relative to condemnation of road right-of-ways.

"On June 5, 1957, the State Highway Commission filed a condemnation suit in the Circuit Court of Iron County against a number of Iron County residents to condemn a right-of-way for road purposes, the style of the case being State of Missouri, ex rel State Highway Commission, of Missouri vs. Ray Jennings, et al. The only party involved here was personally served and the cause set for hearing on July 3, 1957. Commissioners were appointed on that day and the property condemned was appraised. The Report of Commissioners was filed on July 9, 1957, and the money compensating said residents was paid into the office of the Circuit Clerk on said 9th day of July, 1957. Thereafter, no exceptions were filed to said Report of Commissioners and final judgment of condemnation was entered on the 5th day of September, 1957.

"Since that day one of the defendants has tried in every manner possible to obtain more compensation for the land condemned on his tract. On this date, June 1, 1959, said defendant presented a petition to the

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County Court signed by perhaps 12 or 15 residents asking that the Court pay him an additional sum for the land taken from him.

"The County Court asked my opinion on the matter and it was to the effect that said Court was without authority to allow defendant more compensation than was awarded under the final decree of the Circuit Court. However, if the Court decided that the defendant was not sufficiently compensated for the loss of his land, could it legally pay him a sum in excess of the award of the Commissioners?"

"I will appreciate your opinion on this matter as soon as possible as I am sure that the County will become more involved than it is at the present time. Thank you for your cooperation."

Section 227.120, RSMo 1949, states 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:

"(1) Acquiring the right of way for the location, construction, reconstruction, widening, improvement or maintenance of any state highway or any part thereof."

Numbered paragraph 13 of the above section states that if condemnation becomes necessary that the state highway commission shall have the power to proceed to condemn such lands in accordance with the provisions of Chapter 523, RSMo 1949.

Chapter 523, supra, sets forth the manner in which the petition for condemnation shall be filed, which petition shall include a request that three disinterested freeholders be appointed to assess the damages which will be sustained by the landowners whose property it is sought to condemn. The chapter then proceeds to outline the procedure which follows the filing

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of the petition. Section 523.050 reads:

"1. Upon the filing of such report of said commissioners, the clerk of the court wherein the same is filed shall duly notify the party whose property is affected of the filing thereof; and the report of said commissioners may be reviewed by the court in which the proceedings are had, on written exceptions, filed by either party in the clerk's office, within ten days after the service of the notice aforesaid; and the court shall make such order therein as right and justice may require, and may order a new appraisalment, upon good cause shown.

"2. Such new appraisalment shall, at the request of either party, be made by a jury, under the supervision of the court, as in ordinary cases of inquiry of damages; but notwithstanding such exceptions, such company may proceed to erect said telephone or telegraph line, or construct said road or railroad; and any subsequent proceedings shall only affect the amount of compensation to be allowed. In all cases arising under the provisions of this chapter, the report of commissioners, when signed by a majority of them, shall be taken and considered as the report of all."

In your letter you state that this section was not complied with inasmuch as no exceptions were filed to the report of the commissioners in this specific case, and that final judgment of condemnation was entered on the fifth day of September, 1957. In the case of the City of St. Louis vs. Pandjiris Weldment Co., 270 SW2d 17, at l.c. 18, the Missouri Supreme Court stated that: "Under the charter of the City of St. Louis, if there be a failure to timely demand a trial by jury, the commissioners have exclusive authority to assess the damages and their award has the effect of a jury verdict."

It will be noted that this holding was with respect to the charter of the City of St. Louis, but we believe that the same principle of law is applicable in this instance and that the effect of a commissioner's report, which was not excepted

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to and which became final, is in the same legal position as the verdict of a jury. Thus it seems clear that the landowner in this instance has no action against the state highway department, and indeed he does not purport to have any. We have emphasized this phase of the matter because we wish to make it clear that the movant in this matter was a state agency, to wit, the state highway department, moving to condemn property for state purposes, to wit, a state road. Presumably the report of the commissioners, to which no exceptions were filed, represented a fair price for the land which was taken. To say the least the landowner is now unable, legally, to assert the contrary.

In this regard we direct attention to 15 C. J., Section 264, Page 562, which reads in part:

"One who asks payment of a claim against a county must show some statute authorizing it or that it arises from some contract express or implied which finds authority of law. In other words, no claims are chargeable on a county treasury nor can they be paid therefrom except such as the law imposes on the county or empowers it to contract for, either expressly or as a necessary incident, and no officer of the county can charge it with the payment of other claims, however meritorious the consideration, or whatever may be the benefit the county may derive from them, and where a statute prescribes that certain things shall be done at the expense of the county by certain officials of the county, or by persons designated by them, only such officials or persons designated can put the county to expense for such items."

In this connection we direct attention to the case of State ex rel. vs. Clark, State Auditor, 57 Mo. 25. This was a case where an application for a mandamus was made to compel the State Auditor to issue a warrant on the treasury for the amount of a bill for board and lodging of a petit jury in the trial of a capital case. The Auditor refused to allow such an item on the ground that he had no authority by law to do so. The court held that there was no such statute authorizing the State Auditor to make such a payment and that, therefore, he was correct in

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refusing, thus laying down the principle that state moneys should be paid only when there is direct statutory authority for so doing.

In the case of Bright vs. Pike County, 69 Mo. 519, one Coe was indicted for murder in the Circuit Court of Pike County, was tried in Marion County on a change of venue, and the expense of boarding the jury was taxed as cost against Pike County by the Circuit Court of Marion County. Pike County refused to pay the bill on the ground that there was no statutory authority for them to do so. The Missouri Supreme Court held that they were correct in so refusing.

In the case of Person vs. Ozark County, 82 Mo. 491, the matter in issue was also the payment for the cost of boarding a jury. There the court stated, 1.c. 492:

"In 1880, the subject matter of the claim passed upon by the county court, could not be made the basis of a lawful demand against the county. There being no authority whatever, under any circumstances, for such an allowance, as was made to the sheriff of Oregon county, the warrant drawn in pursuance thereof was a nullity. It was a mere gratuity, and cannot be enforced against the county. The failure of the legislature to make provision for the payment of such necessary expenses as were incurred by the sheriff in this case, was doubtless an accidental omission, as they are now provided for by the act of March 8th, 1883, (Sess. Acts 1883, p. 80); but this fact cannot alter our judgment, which must follow the law in force at the time the warrant was issued."

We believe that the above establishes the principle that public moneys should be paid only when there is clear statutory authority for so doing. We do not believe that in the instant case there is such authority for the County Court of Iron County to make the payment requested.

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CONCLUSION

It is the opinion of this department that Iron County cannot legally pay to a landowner additional compensation for his land which was condemned by the state highway commission for a state road in an action in which final judgment of condemnation was entered on September 5, 1957.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Hugh P. Williamson.

Very truly yours,

John M. Dalton
Attorney General

HPW:gm/bjw