

EMINENT DOMAIN:  
CITIES, TOWNS AND  
VILLAGES:

Incorporated towns or villages have, by the terms of Section 80.090, RSMo 1949, the power of eminent domain to condemn land for the purpose of location and laying out of streets. Section 71.340, RSMo 1949, does not grant any powers of eminent domain, nor does it extend the powers granted under Section 80.090, RSMo outside the corporate limits of the town or village.

January 5, 1960



Honorable E. Gary Davidson  
Member, Missouri Senate  
15th District  
300 North Gore Avenue  
Webster Groves 19, Missouri

Dear Mr. Davidson:

This is in reply to your letter of November 10, 1959, requesting information as to the power of eminent domain of incorporated towns and villages. Your inquiry reads:

"A couple of questions concerning the power of eminent domain of incorporated towns and villages have arisen in St. Louis County. I would greatly appreciate your opinion on these matters and hereby request the same:

"a. Does an incorporated village or town have the power of eminent domain to condemn land for the location and construction of a new street within the village or town under Subsections (30) and (33) of 80.090, Mo. R.S., 1949; or under any other power?

"b. Does an incorporated village or town have the power of eminent domain to condemn land for the location and construction of a new street leading to such village or town in the adjacent unincorporated territory a distance of five (5) miles from the limits of such village or town under 71.340 Mo. R.S., 1949?"

As to the power of incorporated towns and villages, before assertion of any power by the town's governing body, it must be able to point to the source of its authority. The general rule is stated in *Krug v. Village of Mary Ridge*, 271 S.W. 2d 867, l.c. 870, as follows:

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"Incorporated villages possess no powers other than those granted by the lawmaking power of the state either in express terms or by necessary implication."

Chapter 88 of the Revised Statutes of Missouri, 1949, governs condemnation and the modes of procedure for the exercise of the power of eminent domain by cities of all classes in this state. This chapter of our statutes is, however, silent as to incorporated villages or towns. Consequently, the power of eminent domain, if it is to be exerted by a town or village for the establishment and construction of new streets, must be specifically set forth or necessarily implied elsewhere in the laws pertaining to powers of towns and villages.

We turn now to Section 80.090, RSMo 1949, and question a. of your letter. Section 80.090 reads, in part:

"Such board of trustees shall have power:  
\* \* \* \* \*

"(30) To locate and lay out new streets and alleys;  
\* \* \* \* \*

"(33) To widen streets heretofore laid out in such town, and to appoint three commissioners to assess the damages done to property upon which such street or alley may be located, deducting from such damages the amount of benefit, if any, such street or alley, or the widening thereof, may be to the same; but all assessments so made by the commissioners shall be reported, as soon as may be, to the board of trustees, who may approve or reject the same; and all persons aggrieved by such assessment may, within fifteen days after receiving notice of such assessment, appeal therefrom to the next circuit court of the county, by giving notice of such appeal to said board of trustees at least fifteen days before the first day of the term to which said appeal is taken; and the circuit court, on such appeal, shall be possessed of the case and proceed therewith to final judgment, according to law. In all cases of assessment or appeal, the land to be used for or occupied by the street or alley may be taken possession of for the purpose of establishing and improving such street or alley, as soon as the amount of damages so assessed shall be tendered to the owner; \* \* \* \* \*"

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This power has been passed upon and construed by our courts as giving a town or village the power of eminent domain to condemn land necessary for the location of streets or alleys. In Hart vs. Bothe et al., 247 S.W. 256, l.c. 256, 257, the St. Louis Court of Appeals stated:

"It appears that on July 17, 1920, the trustees of the village of Old Monroe passed an ordinance providing for the opening of an alley across plaintiff's land, from a point at the southern terminus of an alley in block 5 of said village, and extending southwardly to the bank of Cuivre river. This ordinance was in due and regular form, and was enacted strictly in conformity to the provisions of section 8547, R.S. 1919.

"[1] Counsel for plaintiff contend that the acts and proceedings of the board of trustees of the village of Old Monroe in enacting said ordinance are void, on the ground that said section 8547 is in conflict with sections 20, 21, and 30 of article 2 of the Constitution of this state. Inasmuch as the transfer of this case by the Supreme Court to this court determined the fact that no constitutional question is involved in this case, we rule the point against plaintiff. \* \* \* \* \*"

"\* \* \* \* \*The necessity or expediency of opening a street or alley, where its use is to be a public one, is not a subject of judicial inquiry. It was therefore for the trustees of the village of Old Monroe, and not the courts, to say whether there was a public necessity for the opening of the alley in question. \* \* \* \* \*"

The wording of former section 8547, RSMo 1919, considered by the Court in that case is exactly the same as the present section 80.090, RSMo, as to town or village board of trustees' power to establish streets and alleys. In view of the pronouncement by our court that towns and villages do have the power of eminent domain in this instance, we need linger no longer upon question a. of your inquiry and turn next to question b., or the scope of powers given to towns and villages by Section 71.340, RSMo 1949. This section reads:

"The mayor and city council of any city or the chairman and board of trustees of any incorporated town or village shall have the power to annually appropriate and pay out

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of the treasury of such city or incorporated town or village a sum of money, not to exceed ten per cent of the annual general revenue thereof, for the purpose of constructing, building, repairing, working, grading or macadamizing any public road, street and highway and any bridge thereon leading to and from such city or incorporated town or village; and such appropriation shall be made by ordinance and the money so appropriated shall be applied under the supervision and direction of the engineers of such city or incorporated town or village, and of the county highway engineer of the county in which such city, town or village is located, or of some competent person selected by such city, town or village and approved by the county highway engineer, who shall make a report thereof, in writing, to the mayor and city council of such city, or to the chairman and board of trustees of such incorporated town or village; but this privilege shall not extend to a greater distance than five miles from the corporate limits of such city, town or village, and shall not be construed so as to allow any obstruction to or interference with the free use of any such public road, street or highway by the public, except so far as may be necessary while such work is being done, and further shall not be construed to affect the liability of such city, town or village, which liability shall be the same as if such roads, streets and highways were inside the city limits."

Where the power of eminent domain is sought to be invoked, the basis of that power must be clearly granted or necessarily implied from the terms of the statute itself. In *State ex rel. Missouri Water Company v. Bostian*, 365 Mo. 228, 280 S.W. 2d 663, our Supreme Court stated the rule, *l.c.* 666:

"Statutes granting the right of eminent domain are to be strictly construed. The rule is well settled in this state. The right is not to be implied or inferred from vague or doubtful language but must be clearly given in express terms or by necessary implication. *State ex rel. Cranfill v. Smith*, 330 Mo. 252, 257, 48 S.W. 2d 891, 893, 81 A.L.R. 1066; *Southwest Missouri Light Co. v. Scheurich*,

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174 Mo. 235, 241, 73 S.W. 496, 497; Houck v. Little River Drainage Dist., 343 Mo. 28, 37, 119 S.W. 2d 826, 831; 18 Am. Jur., Eminent Domain, Sec. 26, p. 650. In applying the rule, statutes granting the power to take private property for public use are strictly construed against those who seek to avail themselves of the benefit of such statutes and the power is not to be extended beyond the plain provisions of the statute relied upon. \* \* \* \* "

Section 71.340, RSMo grants the city council or town board of trustees power to appropriate and pay out of the city treasury money for the purposes of "constructing, building, repairing, working, grading or macadamizing any public road, street, and highway." This section further determines as to these funds, their manner of appropriation, the limits of appropriation and the manner of expenditure of these funds once appropriated. There is no provision made within this section for the purchase of land whereas in Section 80.090, RSMo provision is made for compensation of property owners.

Compensation of property owners for property taken through exercise of the power of eminent domain is a constitutional requirement in this state. See in this connection Section 26, Article I, Missouri Constitution, 1945.

#### CONCLUSION

An incorporated town or village has the power of eminent domain to condemn land necessary for new streets by virtue of the terms of Section 80.090, RSMo, granting the town's board of trustees authority to locate and lay out new streets and alleys. There is no power of eminent domain given to towns and villages under the terms of Section 71.340, RSMo. Consequently, the powers of eminent domain granted to towns and villages under the terms of Section 80.090, RSMo are confined to the area of the town or village itself and do not extend outside its boundaries.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. Jerry B. Buxton.

Yours very truly,

John M. Dalton  
Attorney General