

October 3, 1961



Honorable Channing D. Blaeuer  
Prosecuting Attorney  
Randolph County  
Moberly, Missouri

Dear Sir:

This is a letter of advice and not a formal opinion in response to your letter of July 3, 1961, requesting our views on whether or not a special road district has the right to regulate parking and vehicular traffic on public roads within the district, and if so, how violations of the regulations may be enforced.

The general law governing the use of public highways is stated in 40 C.J.S., Highways, Section 232, page 240:

"As the highways of the state are public ways, see supra § 1, they are subject to public control. Thus, subject to constitutional restrictions, the state, through its legislature, has primarily the power to control and regulate public highways and the use thereof, subject only to limitations of reasonableness and equality and to the requirement that regulations do not unreasonably interfere with the rights of travel or other proper public uses of the highways, although the power cannot be restricted within too narrow bounds. This power is an exercise of the police power of the state to protect the highways, and promote the safety, peace, health, morals, and general welfare of the public."

In the same paragraph, i.e. 242, it is further stated:

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"In the absence of a delegation of power, discussed infra subdivision b of this section, local authorities have no right of control or regulation over the highways of the state, any power of the local authorities to regulate traffic on the highways within their jurisdiction being subordinate to the state legislature and subject to the general laws of the state dealing with such matters, unless the general law expressly makes local regulations paramount. Thus, where by statute the power to control and supervise state highways has been vested in a state highway commission, local authorities have no such power over such highways within the confines of the locality."

In the case of *State ex rel. Audrain County v. City of Mexico*, 197 SW2d 301, the court, in holding that the City of Moberly had the authority to install parking meters on that part of the county used as a public street, said at l.c. 302:

"Highways exist primarily for the purpose of travel and transportation, and parking thereon for any extended period is a privilege. 40 C.J.S., Highways, § 233, p. 244. In 1812, it was stated in *Rex v. Cross*, 3 Campbell, 224, a case involving the parking of stage coaches on a street, that: 'No one can make a stableyard of the King's highway.' The highways are subject to reasonable regulation and supervision by the State in the exercise of its police power. *State v. Dixon*, 335 Mo. 478, 481[2], 73 S.W. 2d 385, 387[2]; *Park Trans. Co. v. State Highway Comm.*, 332 Mo. 592, 599, 60 S.W. 2d 388, 390[5]. The State may delegate this power. 40 C.J.S., Highways, § 232, p. 240; 25 Am. Jur. p. 544, Secs. 253-255."

The court further found that the State of Missouri had, by statute, delegated express authority for municipalities to regulate vehicular traffic within its boundaries and that regulating automobile parking is a valid exercise of the state's delegated police power. Section 304.120, RSMo 1959.

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The police power is an attribute of sovereignty and exists without any reservation in the Constitution, being founded on the duty of the state to protect its citizens and provide for the safety and good order of society. The police power of the state may, in the absence of any constitutional restriction, be delegated to municipal corporations.

The next question, then, is, has the authority to regulate traffic or parking been delegated to special road districts.

Section 233.070, RSMo 1959, relating to city and town road districts, gives the district exclusive control over public highways therein to construct, improve, repair and remove obstructions from such highways, and shall have such powers as are conferred by general law upon road overseers. We find no express statutory authority given to special road districts to regulate traffic or parking on public roads in their district. Chapter 231, RSMo 1959, relates to the appointment and duties of road overseers. We find no express authority given to road overseers to regulate traffic or parking on public roads.

The authority given commissioners of special road districts by statute is the right to construct, improve, repair and maintain public roads, but no reference is made to the authority to regulate traffic or parking on such roads. It follows, therefore, that since the power to regulate traffic belongs to the state and it has not been expressly or by necessary implication delegated to commissioners of special road districts, it would appear that the power in such districts does not exist. Section 304.130, RSMo 1959, authorizes county courts in class one counties to control traffic on public roads outside of incorporated areas in such county. This appears to be the only statute authorizing any county to regulate traffic on public roads. Counties, like other public corporations, can exercise only powers granted them by statute, either in express language or necessarily and clearly implied in language incident to powers expressly granted. Any reasonable doubt concerning the existence of a power must usually be resolved against the exercise of such power. *Lancaster v. Atchison County*, 352 Mo. 1039, 180 SW2d 706. It therefore appears that, since there is no statute expressly authorizing third class counties to exercise the power, Randolph County does not have such power.

Sections 304.021 and 304.024, RSMo 1959, relate to authority of the State Highway Commission. However, these statutes would not aid in the solution of this problem since the roads involved are not under the jurisdiction of the State Highway Commission.

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We therefore must conclude that we find no authority for either this road district or the county to regulate or prohibit parking in the situation involved in your inquiry. We do not know whether this is an accidental oversight of the Legislature or whether it is an intentional withholding by the Legislature of the power to regulate traffic and parking on country roads.

We do, however, wish to make some observations as to solutions which you might consider. It occurs to us that either the road district or the county court, even though it has no authority to do so, might erect "no parking" signs at the place where it is felt desirable and necessary. You might then utilize Section 229.170, and perhaps even Section 229.150 which makes obstructions of the highway a misdemeanor. We, of course, recognize that it is possible that these two sections may well be construed as not applying to the parking of automobiles, nevertheless you may consider it wise or useful to try that approach and test the question of whether those statutes do apply. We offer these ideas merely by way of suggestion for your consideration and possible use if you think that they might be helpful in the solution of your problem. We hope you will understand that this is not an expression of an opinion of this office that these statutes do in fact apply to the situation you have in mind.

We hope that these observations may be of some aid or assistance to you.

Yours very truly,

THOMAS F. EAGLETON  
Attorney General

By

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J. Gordon Siddens  
Assistant Attorney General

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