

CONSTITUTIONAL LAW:  
LEGISLATION:  
EASEMENTS:  
STATE PARK BOARD:

Constitutional prohibition against special or local laws laying out roads, highways, streets or alleys does not apply to private road.

May 10, 1961



Mr. Joseph Jaeger, Jr.  
Director of Parks  
Missouri State Park Board  
1206 Jefferson Building  
Jefferson City, Missouri

Dear Sir:

This is in answer to your request for an opinion, which request reads as follows:

"Attached please find a copy of Senate Bill No. 155, pertaining to a road easement at Lake of the Ozarks State Park. I should like to call your attention to the Constitution of Missouri, Article III, Section 40, Subsection 17. I am anxious to learn if Senate Bill No. 155 is in conflict with the Constitution of Missouri, and therefore unconstitutional."

The relevant portion of Senate Bill No. 155 reads as follows:

"Section 1. The State Park Board, on behalf of the State of Missouri, is authorized and directed to grant to Carl Hanks and Frances L. Hanks, his wife, their heirs and assigns, an easement for a forty foot roadway for the purpose of ingress and egress on, over, and across land owned by the State of Missouri in Camden County, Missouri, constituting a portion of Lake of the Ozarks State Park, more particularly described as follows: \* \* \*."

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The constitutional provision to which you refer, Section 40(17) of Article III, is as follows:

"The general assembly shall not pass any local or special law:

\* \* \* \*

(17) Authorizing the laying out, opening, altering or maintaining roads, highways, streets or alleys."

In *Reals v. Courson*, 164 SW2d 306, 307, the Supreme Court described special legislation in the following terms:

"A statute which relates to persons or things as a class, is a general law, while a statute which relates to particular persons or things of a class is special \* \* \*.

"The test of a special law is the appropriateness of its provisions to the objects that it excludes. It is not, therefore, what a law includes, that makes it special, but what it excludes.

"If in fact the act is by its terms or in its practical operation, it can only apply to particular persons or things of a class, then it will be a special or local law, however carefully its character may be concealed by form of words."

By this standard, the questioned act is undoubtedly special legislation. It relates not to a general class of persons but singles out particular individuals, and in so doing excludes all others.

All special legislation is not prohibited though; only that set out in Section 40 of Article III of the Constitution. While Senate Bill No. 155 does not specifically create a roadway, it would appear obvious that it "authorizes the laying out" of such a roadway within the meaning of Section 40(17) of Article III. Therefore, at first blush, the bill seems to

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violate the constitutional prohibition contained therein. However, a closer examination of the meaning of this constitutional prohibition leads to a contrary conclusion.

The primary rule of constitutional construction is that words are to be understood in their usual and ordinary sense. *Vanlandingham v. Reorganized School District*, 243 SW2d 107. Each of the terms used in Section 40(17), that is "roads, highways, streets or alleys," is ordinarily used to denote a public way. Elliott, in his *Treatise on Roads and Streets* (4th Ed.), defines highways as follows (Vol. 1, p. 1):

" \* \* \* The term highway is the generic name for all kinds of public ways, including county and township roads, streets and alleys, turnpikes, and plank roads, railroads and tramways, bridges and ferries, canals and navigable rivers. In short, every public thoroughfare is a highway. \* \* \*"

The same writer defines streets as follows (Vol. 1, p. 20):

"A street is a road or public way in a city, town or village. A way over land set apart for public travel in a town or city is a street, no matter by what name it may be called; it is the purpose for which it was laid out and the use made of it that determines its character. \* \* \*"

In *State ex rel. Wabash Ry. Co. v. Public Service Comm.*, 100 SW2d 522, 525, our Supreme Court considered these terms and said:

" \* \* \* A road or a highway is nothing more than a strip of ground set aside, improved, and dedicated to the public for use as a passageway. \* \* \*"

The Court of Appeals, in *Bailey v. Culver*, 12 Mo. App. 175, 183, discussed the commonly accepted meaning of the term "alley," saying that:

" \* \* \* In his leases, the owner called it (the disputed strip) an 'alley;' and

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that word, when not qualified by the term private, is conventionally understood, in its relation to towns or cities, to mean a narrow street in common use. \* \* \*

Another maxim of constitutional construction which may be applied to the section of the Constitution in question is that known as *noscitur a sociis*. The application of this rule was explained by the Supreme Court in *State ex rel. Crutcher v. Koeln*, 61 SW2d 750, 755, as follows:

"These words are found grouped together. In applying the maxim '*Noscitur a sociis*,' we may take it that such coupling together shows that the words are to be understood in the same general sense and are to be regarded as of the same nature. \* \* \*"

Applying the afore-mentioned rules of construction to Section 40(17) of Article III of the Constitution in the light of the authorities cited as to meaning, it is apparent that this section prohibits the Legislature from enacting special laws authorizing the laying out of public roads, etc. Senate Bill No. 155, by its terms, grants a roadway easement to the named grantees solely for private use, and therefore does not fall within the prohibition of Section 40(17) of Article III.

#### CONCLUSION

Senate Bill No. 155 is not violative of Section 40(17) of Article III of the Missouri Constitution, in that it authorizes the establishment of a private, rather than a public, road.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, James J. Murphy.

Yours very truly,

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THOMAS F. EAGLETON  
Attorney General

JJM:ml