



December 27, 1962

Honorable Phil Hauck
Prosecuting Attorney
Grundy County
Trenton, Missouri

Dear Mr. Hauck:

This refers to your letter of December 13, 1962, with reference to your earlier request for an opinion with respect to the relocation of a portion of State Highway No. 6 and the proposed abandonment of the old right-of-way, including certain bridges.

We do not believe that we should undertake to furnish a comprehensive official opinion concerning the power of the State Highway Commission to abandon the old right-of-way. However, we suggest that, basically, the answer lies in the constitutional grant to the State Highway Commission of exceedingly broad authority to relocate all state highways. This is found in the last sentence of Article IV, Section 29, Constitution of Missouri, which reads as follows:

"It shall have authority over and power to locate, relocate, design and maintain all state highways; and authority to construct and reconstruct state highways, subject to limitations and conditions imposed by law as to the manner and means of exercising such authority; and authority to limit access to, from and across state highways where the public interest and safety may require, subject to such limitations and conditions as may be imposed by law."

Thus, the Commission's authority to relocate state highways (and, in so doing, to abandon portions of old

rights-of-way) is not dependent upon the statutory provisions mentioned in your first letter, namely, Section 227.250, RSMo 1959, concerning temporary closings, and Sections 227.260 and 227.270, concerning relocation of undated portions of highways. In this connection, it may be noted that, notwithstanding certain language in Section 227.260, it was construed shortly after its enactment as not being the exclusive basis for relocation of state highways, even under the then existing constitutional and statutory provisions (State ex rel. State Highway Commission v. Gordon, Mo. Sup., 36 S.W.2d 105).

With respect to Article IV, Section 31, Constitution of Missouri, we agree that, by its terms, this section, as stated in your first letter, is "merely permissive"; and it is not our understanding, from the information furnished by you, that the State Highway Commission in fact has contended that it has authority under this or any other constitutional or statutory provision to compel your county to assume the maintenance of the old right-of-way.

Very truly yours,

THOMAS F. EAGLETON
Attorney General

JCB lc