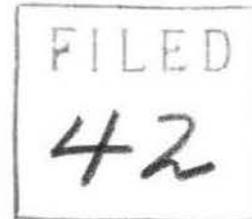


February 11, 1965



Honorable Lloyd J. Baker
State Representative
Randolph County
Moberly, Missouri

Dear Representative Baker:

This letter is in answer to the request of former Representative Herman G. Kidd at the behest of Ronald Windsor, Recorder, for an opinion of this office on the following matter:

"Does a Commissioners report which is asking for the approval of the Court, constitute in itself a change of title requiring the County Recorder to give description to assessor for re-assessment?"

We understand that the term "commissioners' report" means the report of commissioners in a condemnation proceeding in connection with the duty of the county recorder under Section 137.117, RSMo 1959. That section requires the county recorder to furnish to the assessor before the 15th day of the month a description of all real estate transfers completed during the preceding month. The question is whether the filing of a commissioners' report in condemnation proceedings constitutes a change of title requiring the county recorder to give a description of the land involved to the assessor.

Condemnation proceedings are governed by Chapter 523, RSMo 1959, and Supreme Court Rule 86. Rule 86.06 reads:

"The court, or judge thereof in vacation, on being satisfied that due notice of the pendency of the petition has been given, shall appoint three disinterested commissioners, who shall be freeholders, resident of the county in which the real estate or a part thereof is situated, to assess the damages which the owners may severally sustain by reason of such appropriation. The value of the property being condemned and all benefits and damages shall be assessed by said commissioners as of the date the condemnation petition is filed, but if the award of said commissioners has not been paid to the defendants, or to the clerk of the court for said defendants, within one year after said commissioners' award is filed, any subsequent assessment of values, benefits and damages shall be as of the date of such subsequent assessment. Said commissioners, after having viewed the property, shall forthwith return, under oath, to the clerk of such court their report in duplicate setting forth, and stating separately as to all property held under the same ownership, (1) the amount of net damages, if any, together with (2) a separate description of the property for which the damages are assessed, and the clerk shall file one of said copies in his office and cause the other to be delivered to the recorder for the county where the property lies, who shall record the same in his office and shall enter in the abstract and index of deeds at the proper place in the grantor's column the respective names of the first persons alleged to claim, or through whom is claimed some title to each of such respective separately described properties, and the fee for said recording shall be taxed by the clerk as costs of the proceedings. When condemnation proceedings are brought in connection with a project to supply water to any city, town or village, the commissioners or jury shall inquire, and make report as to the value of the use of the stream, or the diversion of the waters thereof, to the extent to which the plaintiff proposes to use it, or to divert them, or what

damage will be done by the erection and maintenance of any dam or buildings which it is proposed to erect and maintain in connection with aforesaid supplying of water, specifically stating to whom and upon what account damages are awarded. When private property is appropriated by a municipality for any public place or use, resulting benefits shall be assessed against the municipality for the amount of the benefit to the public generally and the balance of the benefits shall be assessed against the owner or owners having land within the benefit limits set by the municipality, which land shall be especially benefited by the proposed improvement, to the proportion that each lot of said owners shall be benefited. Upon making payment to the clerk of the amount assessed, for the party or parties in whose favor such damages have been assessed, it shall be lawful for the condemner to take possession and hold the interest in the property so appropriated for the uses aforesaid; and, upon failure to pay the assessment aforesaid within ten days after it becomes final, or, in the case of a municipality, within thirty days thereafter, the court may upon motion and notice by the party entitled to such damages, enforce the payment of the same by execution, unless the condemner shall, within said ten or thirty-day period, elect to abandon the proposed appropriation of any property, by an instrument in writing to that effect, to be filed with the clerk of such court, and to so much as is thus abandoned the assessment of damages shall be void. If such appropriation be so abandoned as to any property, proceedings for the condemnation of the same property shall not be instituted again within two years after such abandonment. The report of the commissioners, when signed by two of said commissioners, shall be taken and considered as the report of all."

Similar provisions are set forth in Section 523.040, RSMo 1959. According to the statute and the rule, a condemner has the right to abandon the proceeding at any time within ten days after the first assessment by the commissioners, or ~~if~~ the court awards a new assessment, within ten days after the final assessment

Honorable Lloyd J. Baker

-4-

by subsequent commissioners or by jury. If the condemnor is a municipality, a period of thirty days is allowed within which to abandon the proceeding. Center School District No. 58 of Jackson County v. Kenton, Mo. Sup. 345 SW2d 120.

Rule 86.08 provides for a trial on the issue of the amount of compensation to be paid by the condemnor in the event that anyone with an interest in the land files written exceptions to the report of the commissioners within ten days after the service or posting of the required notice of the filing of the commissioners' report.

In the case of Kennet & O Railroad Company v. Senter, 83 Mo. App. 181, it was held that the paying into court of the award of commissioners or of a jury completes the appropriation of the land. This case has been followed by many later decisions, including the recent case of City of Jefferson vs. Capital City Oil Co., Mo. App. 286 SW2d 65.

However, the case of State ex rel. State Highway Commission vs. Deutschman, et al., Mo. Sup. 142 SW2d 1025, held that the condemnor could abandon property even after payment of the award into court, provided that such condemnor had not taken possession of the land.

Therefore, a commissioners' report in condemnation does not, in itself, constitute a change of title requiring the county recorder to give to the assessor a description of real estate transfers completed as contemplated by Section 137.117.

Yours very truly,

NORMAN H. ANDERSON
Attorney General

DLR/sj/kd