

May 16, 1972

OPINION LETTER NO. 94
Answer by Letter - Ruger

Honorable Hayden Morgan
State Representative, District 112
Rural Route 2
Nevada, Missouri 64772



Dear Representative Morgan:

In your opinion request, you asked the following questions:

- "a. To what extent are the policies set forth in Title III of the Uniform Relocation Assistance and Land Acquisition Policies Act of 1970, 84 Stat. 1894, applicable to right-of-way acquisitions for federal aid highway projects by the State Highway Commission?
- "b. If such policies are not so fully applicable to federal aid highway projects of the State Highway Commission, for what provisions would implementing legislation be required?
- "c. On a federal aid highway project of the State Highway Commission where real property is being acquired for right of way, and in view of the said Act, is it proper for the State Highway Commission to acquire the land alone without also acquiring an equal interest in the structures placed thereon by a tenant (assuming no consent to the acquisition of the land alone)?
- "d. Is it proper for the State Highway Commission with respect to a federal aid highway project, and in light of the aforesaid

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federal act, to refuse to settle with the fee owner of property lying within the right of way to be acquired when --

(a) the fee owner is willing to accept in payment for his interest an amount within the Commission's appraised fair market value of his interest,

(b) the Commission and a tenant on the property are in disagreement as to the compensation due the tenant for his interest or interests, and

(c) the Commission will not settle with the fee owner, but instead threatens him with condemnation proceedings, unless the fee owner obtains or coerces the tenant into agreeing without a court determination to the terms unilaterally set by the Commission?"

The Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs Act can be found at 42 U.S.C.A., Sections 4601 through 4651 (Supp. 1972). This Act applies primarily to land acquisition by federal agencies. However, it does contain the following provision at 42 U.S.C.A., Section 4630 (Supp. 1972):

"Notwithstanding any other law, the head of a Federal agency shall not approve any grant to, or contract or agreement with, a State agency, under which Federal financial assistance will be available to pay all or part of the cost of any program or project which will result in the displacement of any person on or after January 2, 1971, unless he receives satisfactory assurances from such State agency that --

(1) fair and reasonable relocation payments and assistance shall be provided to or for displaced persons, as are required to be provided by a Federal agency under sections 4622, 4623, and 4624 of this title;

(2) relocation assistance programs offering the services described in section 4625 of this title shall be provided to such displaced persons;

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(3) within a reasonable period of time prior to displacement, decent, safe, and sanitary replacement dwellings will be available to displaced persons in accordance with section 4625(c) (3) of this title."

The legislative history and purpose of this law is discussed in 3 U. S. Code Congressional and Administrative News 5864 (1970).

In answer to question "a" of your opinion request, it is clear from the above-quoted provision of the Relocation Assistance Act that, in a federally assisted project conducted by a state agency, the applicability of the Act is expressly governed by the language of 42 U.S.C.A., Section 4630 (Supp. 1972).

By statute, the Missouri Highway Commission has been given the authority and direction to comply with federal legislation providing for the distribution and expenditure of funds by the United States for highway construction. Section 226.150, RSMo 1969. Thus, in answer to your second question, no further legislation is necessary to authorize the State Highway Commission to comply with the directives of the Relocation Assistance Act.

Your third question, in which you ask whether the State Highway Commission may acquire a particular tract without also acquiring an equal interest in the structures placed thereon by a tenant, in light of the Relocation Assistance Act, cannot be answered definitively. In general, the terms of the Act provide that financial assistance is to be granted a person displaced from the operation of a business on the acquired tract. On the other hand, the legislative history of the Act, 3 U. S. Code Congressional and Administrative News 5856 (1970) indicates that where the structures on the land taken are in disrepair or obsolete, compensation received for them would be minimal, if any compensation at all were to be paid for the structures themselves. Thus, each factual situation would require a different response. If the property were to be acquired by condemnation, the courts of Missouri have established the principle that the compensation is paid into court for the property itself and then, upon motion, apportioned to the persons having property interests in the land, in accordance with the value of those interests. See e.g., State ex rel. State Highway Commission v. Conrad, 310 S.W.2d 871 (Mo. 1958); City of St. Louis v. Rossi, 64 S.W.2d 600 (Mo. 1933); State ex rel. McCaskill v. Hall, 28 S.W.2d 80 (Mo. banc 1930); cf. Union Electric Co. v. Slay Bulk Terminals, Inc. 475 S.W.2d 136 (Mo.App. 1972).

Furthermore, it would be improper for this office to render a definitive answer to your question "c" because this inquiry

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involves questions of fact that are currently being litigated in the United States District Court for the Western District of Missouri, Central Division, in the case styled Glenn L. Whitmann, et al. v. State Highway Commission, et al. (No. 1793). This lawsuit raises the question of the applicability of the Relocation Assistance Act and State Highway Commission policies implementing this Act as they specifically apply to the compensation for billboard structures located upon lands acquired for highway construction purposes.

The Federal Relocation Assistance Act does not govern the questions asked in question "d" of your request. The State Highway Commission has established procedures applicable to land acquisition. However, any alleged unauthorized or improper action by a state agency can be resolved only within the context of litigation wherein the particular factual issues are fully developed.

It is the opinion of this office that the Uniform Relocation Assistance Act, 42 U.S.C.A., Sections 4601 et seq. (Supp. 1972), is applicable to right-of-way acquisitions for federally assisted highway projects of the State Highway Commission. No implementing legislation is required to make this federal statute applicable. The federal legislation does not establish specific policies for land acquisition. The outcome of pending litigation will determine the propriety of certain land acquisition practices allegedly employed by the State Highway Commission.

Very truly yours,

JOHN C. DANFORTH
Attorney General