

ROADS AND BRIDGES:
PUBLIC ROADS:

Petition is not adequate to confer jurisdiction on County Court for establishment of County Road.

July 24, 1942

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Honorable Mark Morris
Prosecuting Attorney
Bowling Green, Missouri

Dear Mr. Morris:

We are in receipt of your request for an official opinion from this office, which request reads as follows:

"I have the following question on which we would appreciate an opinion:

"Enclosed you will find copy of a petition for the location of a public road which has been presented to the county court. As you will notice this road is about one mile in length and ends at a farm house belonging to A. M. Young. Now, does the county court have to grant this petition, without discretion to do otherwise?"

We wish to supplement the request, for the purpose of this opinion, by stating that there is attached to the above request a petition for location of a public road, based on Section 3473, R. S. Mo. 1939, which petition is on a printed form and describes the road as follows:

"* * 33 feet in width, and situated in the municipal Township of Cuivre, in the County of Pike and State of Missouri, and is of sufficiently great utility to the general public, and that the beginning courses and termination thereof, are as follows, to-wit:

"Commencing in the municipal Township of Cuivre at City limits of Bowling Green running thence in a Southerly direction a distance of 80 rods thence in a westerly direction a distance of 40 rods

thence in a southerly direction a distance of 147 rods to and terminating at the A. M. Young farm in the municipal township of Cuivre. "

It is our view it will not be necessary to deal further with the contents of the petition aside from the above quoted description of the roadway.

Section 3473, R. S. Mo. 1939, provides as follows:

"Applications for the establishment of all public roads, except state roads, shall be made by petition to the county court. Such petition shall be signed by at least twelve free holders of the municipal township or townships through which said proposed road may run, three of whom shall be of the immediate neighborhood, and shall specify the proposed beginning, course and termination thereof, and shall be accompanied by the names of all persons owning land through which said road shall run, with the amount of damages, if any, claimed by them, so far as can be ascertained, and also the names of those who are willing to give the right of way for said proposed road: Provided, that if said proposed road begins or terminates on, or runs along a boundary between the county wherein such petition is filed and an adjoining county, any or all of the petitioners herein required may be freeholders of such adjoining county, and of the municipal township or townships thereof through which said proposed road may run, or in which said proposed road may begin or terminate."

It will be noted from a reading of the above section that it is provided in part "application for the establishment of all public roads, except state roads, shall be made by petition to the county court and shall specify the proposed beginning, course and termination thereof, * * * *". In the early case of Spurgeon v. Bartlett, 56 Mo. App. 349, l. c. 355, the court had this to say:

"Applications to open public roads are summary in their nature, and are had with a view to condemn the property of the citizen for the benefit of the public. They must, therefore, be conducted in strict compliance with the statutes governing the subject. Otherwise the court obtains no jurisdiction in the first instance, and all its ulterior proceedings are void. Anderson v. Pemberton, 89 Mo. 61; Quincy, etc., Railway Co. v. Kellogg, 54 Mo. 334; Jefferson County v. Cowan, 54 Mo. 234; Whitely v. Platte County., 73 Mo. 30."

Therefore, from a statutory construction of Section 8473, as applied to the description of the proposed road, we find that it is stated that the road shall commence at the city limits of Bowling Green. Limiting ourselves for the moment, to this beginning point, we must bear in mind that Bowling Green, Missouri, is a town of some two thousand inhabitants and the city limits of said town comprise a considerable area, and each boundary line of said town would be of considerable length. The above quoted description, failing to point out a definite and certain beginning point on the city limits boundary line certainly makes the description most indefinite in determining where the beginning point of said road shall be. Further, it may be pointed out that the description says that the road shall run in a southerly and westerly direction, as these terms are very indefinite and merely describe a general course. Further, the description designates that the road shall terminate at the A. M. Young farm. It may be that the A. M. Young farm is a local appellation and would be within the knowledge of a surveyor or one endeavoring to fix the terminating point, however, the description does not designate at what place the road shall terminate on this farm. The farm may contain a considerable acreage and the terminating point could be at

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various points. For that reason, it must be said that the terminating point is very indefinite and uncertain. We note in the opinion request that it states "the A. M. Young farmhouse", but we do not consider that the description is definite enough to indicate this conclusion. It is our opinion that the description set forth in the petition is so indefinite and uncertain that it does not give the county court jurisdiction over the subject matter contained in the printed petition attached to the opinion request.

To sustain our position, we call attention to the case of Williams v. Kirby, 169 Mo. 622, 1. c. 628, wherein the court said:

"The notice in the first place was jurisdictional (Railroad v. Young, 96 Mo. 39) and without it all the proceedings would have been without authority and absolutely void. And anything that was thereafter done toward condemning defendant's land for levee purposes, not in pursuance of it, or with respect to lands of defendant not embraced within its provisions, rendered the entire proceedings a nullity.

"It is plain from a casual reading of the petition that it does not specify the termination of the proposed right of way. 'to a point in what is known as the Highlands, in survey 1051, section 17,' is evidently too indefinite for any purpose, and clearly does not comply with the statute which requires the termination to be specified in the petition.

"No surveyor could find the terminus of it under such a description, for how could he determine from the petition the exact point in what is known as the Highlands in survey 1051, section 17, was intended under a description so indefinite. It would be impossible.

"and it has been uniformly held by this court, in proceedings to condemn private property for public use, that unless it affirmatively appear upon the face of the proceedings that every essential prerequisite of the statute conferring the authority has been complied with, such proceedings will be void. (Anderson v. Pemberton, 89 Mo. 61; Whitely v. Platte County, 73 Mo. 30; Jefferson County v. Cowan, 54 Mo. 234; Zimmerman v. Snowden, 38 Mo. 218.) That the petition does not specify the terminus of the proposed right of way, is too clear for argument, and, as it must appear from the face of the record in order to confer jurisdiction on the county court in the first instance, it must follow that neither the circuit nor the Supreme Court acquired jurisdiction of the property by appeal."

The views expressed in this case, so far as we can find, have not been overruled by the courts and must be taken as the law, in determining questions as presented by the opinion request.

CONCLUSION

From the foregoing, it is the view of this department that the petition containing the description of the proposed road as set forth in this opinion, is too indefinite and uncertain to specify the proposed beginning

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course and termination of such proposed road, within the meaning of Section 8473, supra, thereby rendering the petition for location of the public road void, and not conferring jurisdiction upon the County Court of Pike County over the subject matter contained in said petition.

Respectfully submitted,

B. RICHARDS CREECH
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General

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