

ROADS: Damages occasioned by relocation may not be paid by
COUNTY COURT: county unless road established and damages ascer-
tained as provided by law.

November 27, 1944.

Hon. William S. Thompson,
Prosecuting Attorney
Mercer County,
Princeton, Missouri.



Dear Sir:

Your letter of August 29, 1944, is as follows:

"I desire your legal opinion on the following proposition. The old county court agreed with a landowner to relocate a road upon him and pay him the reasonable value of the property used, together with any other damages resulting therefrom. There was little question of their ability to get together on the price. No orders were made by the court in regard to said roadway but the court simply moved in and built the new road, relocated it at a substantial saving to the county over putting it in the old right-of-way.

"I desire, and so does the Mercer County Court, to get your answer to two propositions.

"First: In view of the auditor's objection to the county purchasing of right-of-ways, who in this case is entitled to pay for the right-of-way taken and appropriated by the county court in the construction of same?

"Second: Since the county desires to pay for land taken if they have a legal right to do so, is it necessary to settle the amount by the procedure set up in R. S. of Mo. Sections 8476 or can they agree on an amount and pay the same?"

The view we take of this matter does not require a specific answer to the questions asked, since, under these circumstances, the county may not pay the damages which may have been sustained by the landowner due to the relocation of this road upon his property. In your letter you say that the:

"County Court agreed with a landowner to re-locate a road upon him and pay him the reasonable value of the property used, together with any other damages resulting therefrom."

You also state:

"No orders were made by the court in regard to said roadway but the court simply moved in and built the road* * *."

Article 1, Chapter 46, R. S. No. 1939, provides a complete scheme for the establishment of roadways. It requires a petition signed by twelve freeholders and certain information to be given in said petition (Sec. 8473). Notice of the petition for such road must be given (Sec. 8474), and upon presentation of the petition the county court, upon proof the notice was given, may order the road opened. This may be either at the expense of petitioners or the county. If at the expense of the county then (Sec. 8475):

"the court shall make an order directing the county highway engineer, within sixty days thereafter, to view, mark out and survey such road, take relinquishment of the right-of-way of those who will give the same, and take the names of all owners of land, through which said road may run, and who have not given or will not give the right-of-way, and the amount of damages claimed by each one separately* * *."

Section 8476 then provides, in case someone fails to relinquish the right-of-way and claims damages, for the appointment of commissioners who shall proceed to view the premises and assess the damages. These commissioners report to the court what they find, which report is filed with the county clerk. It is then provided:

"If no exceptions be made to said report, within ten days after it is filed, the same shall be taken as a final determination of the amount of damages due any party to the proceeding, and the road shall be ordered established and opened."

Section 8478 then provides:

"If none of the parties in interest file exceptions to the report within the time fixed* * * the county court shall retain jurisdiction of the cause, and at its first sitting thereafter the court shall pay the damages awarded* * *."

This complete proceeding is the only method prescribed, whereby the county can become obligated for the damages arising from the establishment of a road. Beyond a doubt the court never had any right or jurisdiction to proceed, absent filing of the petition and giving the notice. Dillard v. Sanderson, 227 S.W. 658, 660 (Mo. App.).

It therefore appears that the court acted wholly without any legal authority in agreeing to pay the landowner for his damages. Section 3349 R. S. Mo. 1939, provides:

"No county * * * shall make any contract, unless the same shall be within the scope of its powers or be expressly authorized by law* * *."

Back of this statute is Section 48, Article 4 of the Constitution, which provides:

"The General Assembly shall have no power to * * * authorize any county * * * to * * * pay nor authorize the payment of any claim hereafter created against * * * any county * * * under an agreement or contract made without express authority of law; and all such unauthorized agreements or contracts shall be null and void."

It therefore is clear that the court's agreement to pay the damages is wholly void for there was no apparent attempt made to conform to the requirements of law in fixing this claim for damages as a county liability.

Since we have concluded that the county court cannot just simply pay these damages off hand, it is not necessary to determine whether the amount thereof can be now ascertained under Section 8476. Except that we will say that that section sets forth but one step in a legal action which must be begun upon a petition and notice. To merely appoint commissioners to Assess damages, and then proceed from there, would be like starting a law suit with the jury bringing in a verdict.

CONCLUSION

It is our opinion that the county court has no authority to pay the damages arising from the relocation of a roadway

Hon. William S. Thompson,

-4-

11-27-44

unless that roadway was established and the damages ascertained in the manner provided by law.

Respectfully submitted,

LAWRENCE L. BRADLEY
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APPROVED:

VANE C. THURLO,
(Acting) Attorney General.

LLB/LD