

COUNTY FAIR: County court does have power to order incorporation
COUNTY COURT: of agricultural and mechanical societies under
INCORPORATION: provisions of Section 14161, R. S. Mo. 1939..

June 6, 1949



Honorable John M. Rice
Prosecuting Attorney
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Neosho, Missouri

Dear Sir:

Under date of May 5, 1949, we rendered an official opinion to you, the conclusion of which held that the county court has no power to incorporate an agricultural and mechanical society under the provisions of Section 14161, R. S. Mo. 1939. This conclusion was predicated upon the holding of the Kansas City Court of Appeals in the case of State vs. Pemberton, 151 S. W. (2d) 111, where the court held that a county court would have to determine judicially the question of whether or not a petition presented to it had been signed by the requisite number of "householders."

Since the date of rendition of the above referred to opinion, the Supreme Court of Missouri, en banc, decided the case of State ex rel. Lane vs. Pankey, et al., No. 41324 (not yet published). The court in this case had before it in prohibition proceedings the question of whether or not the county court has the right to entertain proceedings for the establishment of a change in a public road. The court said:

" * * * The new Constitution, as construed in the Rippeto case and as we now construe it, invalidates no provision of existing statutes relating to the authority of county courts over public roads except such as purport to authorize the county court to exercise judicial power. A county court can no longer adjudge the compensation to be paid for lands to be taken for road purposes nor render judgment divesting title from the owners thereof. But such court may take all statutory steps to determine the necessity, location, width and type of construction of public county roads, to determine whether same shall be constructed in whole or in part at county

expense, and, when title has been legally acquired, to perform the administrative functions of supervising the construction and maintenance of such roads."

It is to be noted that Sections 8473 and 8475, R. S. Mo. 1939, both of which statutes were under consideration by the court in the Pankey case, supra, contained references to "freeholders," Section 8473 requiring that the petition for establishment of a public road shall be signed by at least twelve "freeholders," and Section 8475 providing that a remonstrance must be signed by twelve or more "freeholders" residing in the municipal township or townships through which it is proposed to establish a public road, three of whom shall reside in the immediate neighborhood.

It is apparent that under the provisions of Section 8473, the court must determine that a petition has been signed by the requisite number of "freeholders" before the court acquires jurisdiction of the petition, and that the remonstrance provided for in Section 8475 must be signed by the requisite number of "freeholders" before the court may pass upon such remonstrance. In view of the quoted language from the Pankey case, we believe that a determination of the fact that the requisite number of "freeholders" signed the petition for incorporation of the agricultural and mechanical society is not a judicial act, but is an administrative act which may be validly performed by the county court. Our opinion to you dated May 5, 1949, is, therefore, withdrawn.

CONCLUSION

It is the opinion of this department that a county court does have power to incorporate an agricultural and mechanical society under the provisions of Section 14161, R. S. Mo. 1939.

Respectfully submitted,

C. B. BURNS, JR.
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APPROVED:

J. E. TAYLOR
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CBB:VLM