

ROADS AND BRIDGES) Cost of right of way for new road within special
) road district is borne either by petitioners for
) establishment of road or county, or both.

February 16, 1950

2/17/50

Honorable William H. Wessel
Prosecuting Attorney
Gasconade County
Hermann, Missouri



Dear Sir:

We have received your request for an opinion of this department on the following question:

"I. Does the County Court have to pay for a Right of Way, establishing a new road, if this Road is not being built by the State Highway Department, but is being built by the Commissioners in a Special Road District?"

Sections 8473 to 8478, R. S. Missouri, 1939, vest in the county court exclusive authority to establish public roads within their respective counties. (State ex rel. Lane v. Pankey, 221 S.W. (2d) 195). We presume that the establishment of the road in question has been or will be in accordance with those provisions. Payment for the right of way is determined under Section 8475, which reads as follows:

"When the petition required by section 8474 of this article is presented, upon proof of this notice having been given as required by section 8474, and if no remonstrance, as herein mentioned, is presented, and if the petitioners give the right of way for said proposed road or pay into the county treasury an amount of money equal to the whole amount of damages claimed by landowners through whose land said proposed road would run, the court must, without discretion to do otherwise, open said road and the court shall thereupon proceed as in this section hereinafter provided in cases where upon a hearing the court finds it necessary to establish a road; and if a remonstrance be, presented, signed by twelve or more freeholders re-

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siding in the municipal township or townships through which it is proposed to establish said road, three of whom shall reside in the immediate neighborhood, the court shall hear such witness as the respective parties may produce in regard to the public necessity, practicability and probable damages, if any claimed, to the owner of the land through which it is proposed to establish said road, and the expense of establishing and building same, including bridges and culverts therein; and if the court, upon the hearing, shall find the facts in the case do not justify the establishing of the road at the expense of the county or of the petitioners, the proceedings shall be dismissed; but if the court upon said hearing shall find the facts do justify the establishing of said road, either at the expense of the county or of the petitioners, or both, it shall make an order accordingly. If the court finds it necessary to establish said road at the expense of the county, or if it be found necessary to establish same either wholly or partly at the expense of the petitioners and said petitioners pay into the county treasury, on or before a time to be fixed by the court, the probable amount of damages, ascertained as aforesaid, or a sum to be fixed by the court, to the use of the owners of said lands, then, in either event, the court shall make an order directing the county highway engineer, within sixty days thereafter, to view, mark out and survey such road, take all relinquishments 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, together with a description by section and subdivision thereof of the lands of each owner sought

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to be taken, and also the engineer's estimate of the cost of bridges, culverts and grading that may be necessary upon such road, and shall report his proceeding in the premises, together with his survey and plat of said road, to the court within the time last above provided. If it shall appear from said report that the right of way has been secured, and deeds therefor filed, or that the damages claimed do not exceed the amount offered by the court or deposited by the petitioners as aforesaid, or both, the court shall order the road established. All relinquishments, deeds and plats of said roads shall be by the highway engineer filed in the office of the county clerk and shall be preserved as public records, and all such deeds shall be filed and recorded in the office of the recorder of deeds."

We find no provision in either Article 10 or Article 11 of Chapter 46, R. S. Missouri, 1939, pertaining to special road districts, which makes other provision for the payment of the cost of right of way in new roads established by the county court within such special road districts. Therefore, Section 8475 is the applicable section insofar as new roads within such districts are concerned. That section provides that either the petitioners shall pay into the court the amount of damages for right of way, or the right of way shall be acquired at the expense of the county.

CONCLUSION

Therefore, it is the opinion of this department that under Section 8475, R. S. Missouri, 1939, upon the establishment of a new road within a special road district, the costs of the right of way for such road must be paid by either the petitioners for the establishment of such road or at the expense of the county, if the county court, upon hearing, finds that the facts justify the establishing of such road at the county's expense, or partly at the expense of the petitioners and partly at the expense of the county.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
Attorney General

RRW/feh