

TOWNSHIP FUNDS: Township Board has authority to use Township funds in payment of damages for condemned right of way to be used for road construction being done under provisions of the King Road Bill (Sections 231.440 to 231.500, RSMo 1949.)

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Honorable Ernest Troutman
Prosecuting Attorney
Carrollton, Missouri

Dear Sir:

I have before me your request for an opinion of this department. Also your letter of March 1, 1951, containing additional facts the same having been requested of you by this office. The pertinent part of the March 1st letter is as follows:

"The situation as presented to me is this:

"A Township road, then maintained by the Township was designated as a road to be widened and otherwise improved under the provisions of the so called King-Thompson Bill. (Sections 231.440 to 231.500 R. S. Mo. 1949.) Representatives of the State Highway Commission procured right of way from some of the landowners but not all. Thereupon a condemnation suit was instituted in Carroll County by the State of Missouri, in relation of the State Highway Commission. The petition was approved and Commissioners appointed. The Commissioners made a report awarding damages in the aggregate approximating \$1500.00. The Highway Commission filed exceptions to the report. These exceptions have not yet been heard.

"The Highway Commission advised the County Court and the Township Board that the State would pay none of the damages. Thereupon the County Court paid a portion of the award into the office of the Circuit Clerk and the Township Board issued a warrant by which it paid approximately one-third of the damages. This sum was also deposited with the Clerk. It was designated as payment for right of way.

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"Title to the condemned land was taken in the name of the State.

"My inquiry was whether or not the Township Board had authority to use Township funds for the acquisition of such right of way, when it was not a party to the suit nor acquired any title to the lands condemned."

We believe the situation, as explained by you, in the portion of your letter above set out is covered by Section 231.460, RSMo 1949, it being one of the sections of the statutes comprising the King Road Bill (Sections 231.440 to 231.500, inclusive, RSMo 1949) which you erroneously refer to as the King-Thompson Bill.

Section 231.460, supra, reads as follows:

"1. The county roads to be improved, constructed, reconstructed, or restored under the provisions of sections 231.440 to 231.500 shall be selected by the respective county courts of the counties wherein said roads are located. The county courts in counties having special road districts or counties under township organization, when authorized by any such special road district or county township organization, may represent and cooperate with, enter into contracts with, or for, and receive funds, plans and proposals from or for such special road districts and townships, for the purpose of carrying out the provisions of sections 231.440 to 231.500. Each county court shall select such roads in the following order:

"(1) County roads which are used for all of the following purposes: School bus routes, mail routes, milk routes.

"(2) County roads which are used for any two of the following purposes: School bus routes, mail routes, milk routes.

"(3) County roads which are now used for any one of the following purposes: School bus routes, mail routes, milk routes.

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"(4) County roads which may be used, if improved or restored, for any one or more of the following purposes: School bus routes, mail routes, milk routes.

"(5) Any other county road, provided consideration shall be given to the number of farms served by said road and the amount of traffic on said road.

"2. In the selection of such roads on the above basis and in the above order, the county court shall give consideration, first, to all-weather county roads which have deteriorated and are in need of restoration or reconstruction, second, to dirt or non-all-weather county roads, and third, to any other county roads.

"3. 'County roads' as used in sections 231.440 to 231.500 means all public roads located within any county, except roads or highways constructed or maintained as state roads or highways, and except roads, streets or highways in incorporated villages, towns or cities."

(Underscoring ours.)

The underscored portion of the statute as set out above undoubtedly gives townships the authority, when acting in accordance with the terms of the statute, through their respective county courts, the right to receive and disburse monies in securing county aid road funds (King Road Bill Funds).

Acting under the township board's authorization, as here given, the county court can do all things necessary to carry out the provisions of the King Road Bill, supra, with regard to obtaining county aid road funds and doing all other things necessary, such as here the condemnation of certain real estate to enable the widening and improvement of the road here in question.

The fact that the county court acting through the State Highway Commission condemned the right of way in the name of the State is of no moment here, as in the last instance the condemnation of all land condemned for public purposes by any political subdivision, can only be exercised by it because of

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the State's relinquishment of that part or parts of its right of eminent domain to its various parts by express statute. /The State ex rel. J. Henry Caruthers, Appellant, v. Little River Drainage District, et al., 271 Mo. 429, l.c. 435, 196 S.W. 1115.]

CONCLUSION

It is, therefore, the opinion of this department that the Township Board had authority to use Township funds to acquire this right of way, although it was not made a party by name to the condemnation suit nor did it acquire title to the lands condemned.

Respectfully submitted,

A. BERTRAM ELAM
Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney General

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