

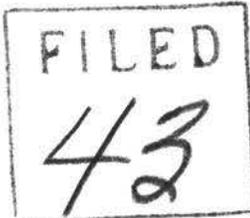
FERRIES:

STATE HIGHWAY COMMISSION:

Missouri Highway Commission has authority to purchase, operate and maintain a ferry across the Mississippi River; Missouri Highway Commission has authority to enter into contract with the State of Illinois whereby the two states could share equally the cost of purchase, operation and maintenance of such a ferry.

JOHN M. DALTON  
XXXXXXXXXXXX

May 27, 1953



J.C. JOHNSEN  
XXXXXXXXXX

Honorable William L. Hungate  
Prosecuting Attorney  
Troy, Missouri

Dear Sir:

This department is in receipt of your recent request for an official opinion. You thus state your request:

"There is a very strong, joint movement in the States of Missouri and Illinois to have a ferry operate on the Mississippi River to connect Missouri State Highway P near Elsberry, Missouri, with Illinois State Highway 96 at Hamburg, Illinois.

"Both of these State Highways end abruptly at the river bank at points opposite each other.

"The following questions have been raised:

"(1) Does the State Highway Commission have authority to purchase, operate and maintain a ferry across a navigable stream like the Mississippi River?

"(2) Does the State Highway Commission or the State of Missouri have the power and authority to enter into a compact with the State of Illinois whereby the two states could share equally the costs of purchase, operation and maintenance of such a ferry?

"You will probably find some authority in Section 227.120 Subsection (2) Mo. Rev. St. 1949, on the authority and power of the Commission to operate ferries on navigable streams.

Honorable William L. Hungate

We first direct attention to Section 227.120, RSMo 1949, which reads in part:

"The state highway commission shall have power to purchase, lease, or condemn, lands in the name of the state of Missouri for the following purposes when necessary for the proper and economical construction and maintenance of state highways:

\* \* \* \* \*

"Acquiring bridges or sites therefor and ferries, including the rights and franchises for the maintenance and operation thereof, over navigable streams, at such places as the state highway commission shall have authority to construct, acquire or contribute to the cost of construction of any bridge."

From the above it appears that the State Highway Commission has the power to operate a ferry at such places as it would have authority to "construct, acquire or contribute to the cost of the construction of any bridge." Our question then becomes: would the State Highway Commission have the authority to "construct, acquire or contribute to the cost of construction" of a bridge across the Mississippi River to connect Missouri State Highway P near Elsberry, Missouri, with Illinois State Highway 96 at Hamburg, Illinois?

In this regard, we direct attention to subparagraph (c) of paragraph (3) of Section 30 of Article IV of the 1945 Constitution of Missouri, which states:

"In the discretion of the commission (State Highway Commission) to locate, relocate, establish, acquire, construct and maintain the following:

\* \* \* \* \*

"(c) any tunnel or interstate bridge or part thereof, where necessary to connect the state highways of this state with those of other states."

(Words in parenthesis ours)

Honorable William L. Hungate

We would now direct attention to the case of State ex rel. State Highway Commission v. Sevier, 97 SW (2d) 427. At l.c. 427, et seq., the court in its opinion stated:

"In substance the alleged material facts follow: The Missouri highway commission, Kansas state highway department, and Atchison, Kan., entered into a joint undertaking to construct the bridge with the aid of the federal government, and to construct certain highways in both states leading to the bridge, which highways the federal government required as part of the federal project. Plaintiffs in the injunction suit conclude from certain alleged facts that the city of Atchison and state of Kansas cannot or may not perform their parts of the undertaking. From this they also conclude that construction by the Missouri highway commission of its part of the undertaking would be a waste of public funds. There is no allegation of bad faith, collusion, and fraud. Furthermore, there is no allegation that, under the circumstances, it would be a violation of either the statute or Constitution for the commission to construct its part of the bridge at this time.

"In due course the Missouri highway commission proceeded to perform its part of the undertaking. It accepted the bid of the Bushman Construction Company, defendant in the injunction suit, to construct bridge piers and a highway leading to the bridge, all on the Missouri side of the river. Thereupon respondent judge issued a temporary injunction restraining the commission and company from entering into a contract for said construction.

"Plaintiffs in the injunction suit seek the judgment of the circuit court on the question of waste of public funds. Relators herein contend that the question of whether or not the city of Atchison and state of Kansas cannot or may not perform their parts of the construction of the bridge and highways is solely for the determination of the highway commission.

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"It is provided in the Constitution that the money in the state road fund shall be 'administered and expended under the direction and supervision' of the commission for certain highway purposes, including participation in the construction of free interstate bridges, 'and for such other purposes and contingencies relating and appertaining to the construction and maintenance of such highways and bridges as the State Highway Commission may deem proper.' Section 44a, art. 4, Const.

"[1,2] Thus it appears that the commission has absolute discretion with reference to the construction of both intrastate and interstate bridges. In other words, it has sole jurisdiction to determine the question of whether or not the city of Atchison and the state of Kansas cannot or may not perform their parts of the undertaking. Determination of the question by the commission is final. The courts cannot interfere with the ordinary functions of the executive department of the state government. *Selecman et al. v. Matthews et al.*, 321 Mo. 1047, 15 S.W.(2d) 788, loc. cit. 790, 63 A.L.R. 512."

Since it appears to be clear, on the basis of the above authority, that the State Highway Commission has the power to locate a bridge on the state highway system wherever it deems a bridge to be necessary, and since, by Section 227.120, supra, the State Highway Commission is given the power to maintain and operate a ferry at such places as it has authority to construct or acquire a bridge, it seems clear that the State Highway Commission has authority to purchase, operate, and maintain a ferry across the Mississippi River at the place indicated in your letter, since this place is on the state highway system.

On the basis of the authority of the case of *State v. Sevier*, supra, it also appears that the State Highway Commission does have the power and authority to enter into a compact with the State of Illinois whereby the two states could share equally the cost of purchase, operation and maintenance of such a ferry.

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CONCLUSION

It is the opinion of this department that the Missouri State Highway Commission has authority to purchase, operate and maintain a ferry across the Mississippi River; and that the Missouri State Highway Commission has authority to enter into a contract with the State of Illinois whereby the two states could share equally the cost of purchase, operation and maintenance of such a ferry.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Hugh P. Williamson.

Yours very truly,

JOHN M. DALTON  
Attorney General

HPW:mmm