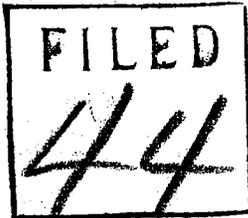


TOWNSHIP ORGANIZATION
COUNTIES:
COUNTY HIGHWAY ENGINEER:
ROADS:

1. In township organization county the county court must have approval of county highway engineer in establishing or changing a road.
2. In township organization county the county court must have approval of county highway engineer in vacating a road.



June 25, 1956

Honorable Richard H. Ichord
Representative, Texas County
Houston, Missouri

Dear Sir:

Your recent request for an official opinion reads as follows:

"It would be greatly appreciated if you would render me an opinion as to the construction and application of Section 228.070 Mo. Revised Statutes as amended 1949.

"Section 228.070 reads as follows:

" 'No County Court shall order a road established or changed until such proposed road or change has been examined and approved by the county highway engineer.' "

"The question involved is whether the above section applies to counties with township organization; i.e., whether in such a county the county court must have the approval of the county engineer in establishing or changing a road; and also there is the question as to whether the word 'changed' covers the vacation of a road; i.e., in vacating a road would the county court have to have the approval of the engineer. Section 228.110 deals with the vacation of a road."

We assume that your inquiry does not relate to counties of class 1 or 2 but to those of class 3 or 4. Section 61.220 RSMo 1949, which applies to counties of these latter classes, reads as follows:

"The county highway engineer shall have direct supervision over all public roads of the county, and over the road overseers and of the expenditure of all county and district funds made by the road overseers of the county.

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He shall also have the supervision over the construction and maintenance of all roads, culverts and bridges. No county court shall order a road established or changed until said proposed road or proposed change has been examined and approved by the county highway engineer. No county court shall issue warrants in payment for road work or for any other expenditure by road overseers, or in payment for work done under contract, until the claim therefor shall have been examined and approved by the county highway engineer."

It will be noted that the above states that the county highway engineer "shall have direct supervision over all public roads of the county, and over the road overseers"

We also direct attention to Section 231.150 RSMo 1949, which reads:

"All road laws of this state shall apply to counties under township organization, unless by their terms limited to counties not under township organization, or in conflict with the provisions of this law."

We also direct attention to Section 231.310 RSMo 1949, which reads:

"It shall be lawful for the county court of any county upon the application of the township board of directors, to empower and authorize the county highway engineer of said county, under the direction of the township board of such township, to survey, locate and plat the public highways of such township; and when such plat shall have been completed and approved by the township board, it shall be filed in the office of the township clerk, together with the minutes and report of such survey, to be kept by such township clerk as a part of his official records, the expenses of such proceeding to be paid out of the road fund of the

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township. The said plat, minutes and reports, or a certified copy of the same, over the hand and seal of the township clerk, shall be prima facie evidence that the road or roads therein contained or described have been constituted a public highway according to law."

As you point out, Section 228.070 Laws of Missouri 1953, reads as follows:

"No county court shall order a road established or changed until such proposed road or change has been examined and approved by the county highway engineer."

We see nothing in the township road law which would remove it from the application of the above statute and believe therefore that the above statute does apply. Your second question is whether the word "changed" in Section 228.070, supra, also covers the "vacation" of a road.

In this regard we direct attention to the case of State v. Cox, 282 S. W. 694. At l.c. 695 et seq. the court stated:

"[5] II. Relators contend, in addition, that the ruling of the Court of Appeals to the effect that a compliance with the statutory requirement (section 10789) that the proceedings to vacate the road shall be examined and approved by the county highway engineer was not a requisite condition precedent to the order of vacation by the county court. This contention is based on the absence from section 10789, of the word 'vacating'; its language in regard to this matter being as follows:

" 'No county court shall order a road established or changed until said proposed road or proposed change has been examined and approved by the county highway engineer.' "

"The relators cite no cases to support this

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contention of a conflict. The Supreme Court has by construction, ruled in Aldridge v. Spears, 14 S. W. 118, 101 Mo. 400, in a petition for opening and changing a road, that the terms 'change' and 'changing' are equivalent to 'vacate' and 'vacating.' The section may, therefore, be so applied, and the Court of Appeals' opinion is in harmony therewith."

In the case of Morris v. Karr, 114 S. W. 2d 962, at l.c. 963, the Missouri Supreme Court stated:

"Appellants' chief assignment of error is that the county court had no jurisdiction to enter the judgment vacating the road because it failed to follow a provision contained in section 8013, R.S. No. 1929, Mo. St. Ann. § 8013, p. 6831, first inserted in said section in 1909, as follows: 'No county court shall order a road established or changed until said proposed road or proposed change has been examined and approved by the county highway engineer,' and that since the county court had no jurisdiction to make the order and enter judgment thereon, then the circuit court on appeal had no jurisdiction to try the case de novo. The failure of the county court to have the vacation of the road approved by the highway engineer before making the order is conceded by the parties. It is also conceded that such a provision of the statute is applicable to this case in which the vacation of a road is sought. This court has ruled by construction that the terms 'change' and 'changing' are equivalent to 'vacate' and 'vacating.' State ex rel. Tummons et al. v. Cox, 313 Mo. 672, 282 S.W. 694; Aldridge v. Spears, 101 Mo. 400, 14 S.W. 118; and see, also, Sheppard v. May, 83 Mo. App. 272."

From the above we deduce that in vacating a road the county court would have to have the approval of the engineer since the vacating of a road is included in the word "changed" according

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to the above cited cases.

CONCLUSION

It is the opinion of this department that in a township organization county the county court must have the approval of the county highway engineer in establishing or changing a road.

It is also the opinion of this department that in a township organization county the county court must have the approval of the county highway engineer in vacating a road.

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

Very truly yours

John M. Dalton
Attorney General

HPW:lc