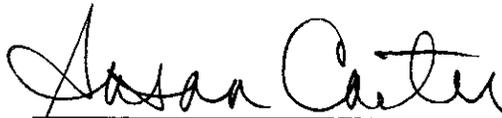


RANDOLPH COUNTY ROAD POLICIES

Date Approved: 12.20.07

Approved by:



Susan Carter, Presiding Commissioner



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The following section regarding *Establishing and Vacating Roads* is a summary of the statutory provisions relating to the subject matter. If any conflict exists, the applicable state law will prevail.

Establishing and Vacating Roads

Article III, Section 40 (17) of the Missouri constitution provides:

“The general assembly shall not pass any local or special law authorizing the laying out, opening, altering or maintaining roads, highways, streets or alleys.” (emphasis added)

With this language in mind, the Missouri legislature passed a set of laws which embodied local governmental authorities with the power to establish and to vacate public records; namely, Chapter 228 of the Missouri Statutes. This paper will attempt to lay out the statutory procedures to establish and vacate public roads as provided in Chapter 228 as well as to address other collateral matters contained in those particular statutes.

I. Statutory Procedure in Establishing Public Roads

Public roads may be established in one (1) of three (3) ways:

- (1) Order of the county commission or use by public as a public highway for a period of ten (10) years or more, or use by the public for a continuous ten (10) year period and expenditure of public money or labor for such period;¹
- (2) By prescription;² or,
- (3) By implied or common-law dedication.³

These ways have been well documented in Missouri case law.⁴

Section 228.020 R.S.Mo. 1990 is the beginning point of the statutory procedure of establishing a public road. It provides that applications for the establishment of public

¹ Section 228.190, RSMo. 1953. Absent a commission order, the issue as to whether a road has been used for ten (10) years and public money has been expended, is before the circuit court. Greene v. St. Louis County, 327 S.W.2d 291 (Mo. 1959).

² Prescription is defined as “evidence of open, continuous, adverse public use for at least ten (10) years. See Gover v. Cleveland, 299 S.W.2d 239, 241 (Mo. App.S.D.1957), Wilson v. Sherman, 573 S.W.2d 456, 459 (Mo.App.S.D.1978).

³ “Common law dedication” is defined as “an appropriation of land, or an easement therein, by the owner, and accepted for such use by or on behalf of the public.” “Implied dedication” is defined as “course of conduct of the owner from which a reasonable inference of intent may be drawn.” Black’s Law Dictionary (6th ed. 1990). For a discussion of Common Law Dedication see Chapman v. Lavy, 20 S.W.3d 610 (2000).

⁴ Karashin v. Haggard Hauling and Rigging, Inc., 653 S.W.2d 203, 205 (Mo.banc 1983).

roads shall be made by petition to the county commission. The petition shall contain the following:

- (1) The signature of at least twelve (12) registered voters of the township(s) through which such proposed road shall run; three (3) voters of whom shall be of the immediate neighborhood.
- (2) Specific description of the beginning and ending point of the proposed road.
- (3) Names of all persons owning land through which the road shall run.
- (4) Specific description of the amount of damages, if any, of establishing the road.
- (5) Names of all those landowners who are willing to give a right-of-way to the county for the proposed road.

The failure to include each and every item as before described in the petition causes the county commission to lose its jurisdiction and any proceedings rendered thereunder are void.⁵

Once the petition is presented with the county commission, the petitioners shall post notice of the application, whether written or printed, in three (3) or more public places in the township(s); one of which shall be posted at the proposed beginning and one at the proposed end of the road. This notice must be posted at least twenty (20) days before the first day of the regular⁶ or adjourned⁷ term of the county commission.⁸

Once the petition is presented, upon proof of the notice having been given, if no remonstrance is filed, and if the petitioners give the right-of-way for the proposed road or pay into the county treasury an amount equal to the amount of damages claimed by the landowners, the commission must open the road.⁹ Again, the failure to meet the before described requirement deprives the county commission of jurisdiction to enter any kind of an order.¹⁰ If a remonstrance is filed, then the county commission must conduct a hearing and make findings. A remonstrance must contain the same signature requirements as a petition; namely, the signatures of twelve (12) or more residents, three (3) of whom reside in the immediate neighborhood. At the hearing, the commission shall hear witnesses regarding the necessity, practicality, and probable damages, if any, of establishing the road. Upon such hearing, the commission can make appropriate orders.¹¹

⁵ Loveland v. Davenport, 188 S.W.2d 850, 852 (Mo.App.A.D.1945).

⁶ Section 49.170, RSMo. 1985.

⁷ Section 49.200, RSMo. 1985.

⁸ Section 49.200, RSMo. 1985.

⁹ Section 228.040, RSMo. 1985.

¹⁰ State ex. rel. Cornelius v. McClanahan, 278 S.W.88, 89 (Mo.App.W.D. 1925).

¹¹ Section 228.050, RSMo. 1990.

If the county commission finds it necessary to establish a public road¹², and the petitioners pay into the county treasury the probable amount of damages due the landowners, the commission shall then direct the county highway engineer to mark out the dimensions of the road within sixty (60) days of its order. The engineer shall also take all relinquishments¹³ of all those who will give a right-of-way and take the names of all those who have not given or are unwilling to give a relinquishment and other collateral damages. After the engineer has done his/her job he/she shall then report the proceedings as well as a survey and plat to the county commission.¹⁴ The county commission shall not order the establishment of a public road until the road has been approved by the county highway engineer. Only when the engineer's report indicates that the right-of-way has been secured, the needs filed and an adequate amount of damages is posted, can the commission order a road established.¹⁵ Likewise, the failure to meet all the statutory requirements renders all commission orders void because of its lack of jurisdiction.¹⁶

II. Statutory Procedure in Vacating Public Roads

Under Missouri law, vacation of a public road may be accomplished in one (1) of two (2) ways.¹⁷

- (1) Abandonment: Nonuse by the public for five (5) years continuously of any public road;¹⁸ or,
- (2) Formal action by an order of the county commission.¹⁹

Generally, once a road is established as a public road, its use inures to and becomes affected by a public interest and the right to use it cannot be abandoned unless all the public concurs.²⁰ For a public road to be vacated by abandonment the nonuse by the public not only must be shown for the statutory period but the nonuse must be clear and entire abandonment. If the road is used infrequently, intermittently or rarely, it is not

¹² Expense for the establishment of a public road can be allocated wholly to the county or to the petitioners; or partly to both the county and petitioners. Section 228.060, RSMo. 1949.

¹³ Once the relinquishments have been obtained, then all relinquishments, deeds and the order of the commission shall be recorded in the office of the recorder of deed. Section 228.090, RSMo. 1949.

¹⁴ Section 228.060, RSMo. 1949.

¹⁵ Section 228.080, RSMo. 1949.

¹⁶ Proctor v. Proctor, 4 S.W.2d 882 (Mo.App. 1927).

¹⁷ Hedges v. County Court for Ray County, 581 S.W.2d 73, 77-78 (Mo.App.W.D. 1979).

¹⁸ Section 228.190, RSMo. 1953.

¹⁹ Section 228.110, RSMo. 190.

²⁰ Hedges, 81 S.W.2d at 78.

deemed abandoned. The nonuse must be complete.²¹ The use of only a portion of a road by the public during the statutory period does not constitute the entire road as being subject to reopening. The portion of the road that had been abandoned for the statutory period would remain abandoned. Changing the course of a road or other minor deviation does not constitute abandonment or defeat the public's right of use.²² A public road cannot be abandoned by agreement.²³ The Statutory requirements must be satisfied.

Section 228.110 R.S.Mo. (1990) sets out the formal procedure for the vacation of a public road. First, twelve (12) residents of the township(s) through which a road runs make an application to vacate the road. In the petition, the petitioners must allege that the road is useless²⁴ and the expense of repairing it is an undue financial burden upon the county. The petition is then publicly read by the commission on the first day of the term²⁵ at which it is presented. The petitioners must post notice of the petition in at least three (3) public places in the township(s) at least twenty (20) days before the first day of the next term and a copy of the notice must be served²⁶ on all person(s) whose land touches the road.

On the first day of the next term, the petition shall again be read publicly. If no remonstrance, signed by twelve (12) residents, is made, then the county commission may proceed to vacate the road at the cost to the petitioners. In the event that a remonstrance is filed, the commission shall consider the remonstrance in arriving at its decision to vacate or not. Costs of the remonstrance procedure shall be taxed to those parties remonstrating.²⁷

III. Collateral Matters

Chapter 228 contains other relevant statutes relating to collateral matters in the establishment and vacation of public roads. Such matters include the entering of orders, the establishment of county roads on county boundary line, and the delicate issue of condemnation.

²¹ *Id.*, *State ex. Rel. Perkins v. Taylor*, 666 S.W.2d 853, 856 (Mo.App.S.D. 1981).

²² *State ex. Rel. Reynolds County v. Riden*, 621 S.W.2d 366, 369 (Mo.App.S.D. 1981).

²³ *Dodge v. Wiles*, 766 S.W.2d 695, 699 (Mo.App.S.D. 1989).

²⁴ "Uselessness contemplated and required to permit vacation must be practical, not an absolute, uselessness." *Burrows v. County Court of Carter County*, 309 S.W.2d 299, 304 (Mo.App.S.D. 1958).

²⁵ Section 49.170 RSMo. 1985.

²⁶ Notice in accordance with Chapter 506 of the Revised Statutes of Missouri.

²⁷ Section 228.110, RSMo. 1990.

A. County Commission Orders

Whenever the county commission enters an order to establish a road pursuant to Section 228.080 or to vacate a road pursuant to Section 228.110, a stenographic record of all proceedings must be made if any party requests the record to be made. Costs of the record shall be taxed to the requester. Any such order of the commission is subject to judicial review pursuant to Chapter 536 (Administrative Procedure and Review Act) of the Missouri Statutes.²⁸ A county commission shall not revoke or set aside any order; nor shall the commission entertain a petition to establish or vacate such a road for a period of one (1) year of entering an order pertaining to that road.²⁹

B. Roads on County Boundary Lines

The procedure to establish a public road, which runs on a county boundary line, is the same procedure used in establishing any other county public road except for a few deviations.

First, the proceedings to establish such a road may be brought in either county where the commissioners from both counties sit as one (1) commission. A majority of the commissioners shall decide all questions.³⁰ Second, a certified copy of the order and report of the engineer shall be filed in the office of the clerk in the county where the proceedings are instituted.³¹

C. Condemnation³²

If the landowner along a proposed public road refuses to relinquish his/her right-of-way or the landowner and the county commission are unable to agree to a specified amount of damages, the commission may institute condemnation proceedings against those landowners based on its granted rights of eminent domain.

When the commission is of the opinion that a public necessity exists for the establishment of the road, it shall order the county highway engineer, within fifteen (15) days thereafter, to survey the road, prepare a map thereof specifying its dimensions, and to file his findings in the office of the clerk. Thereafter, the commission shall cause to be published in a newspaper of general circulation, once each week for three (3) consecutive weeks, a notice giving the dimensions of the road and notice that such land is sought to be taken for public use.

²⁸ Section 228.120, RSMo. 1949.

²⁹ Section 228.130, RSMo. 1949

³⁰ The statute does not address the situation when the commissioners reach deadlock.

³¹ Section 228.140, RSMo. 1939.

³² Section 228.100, RSMo. 1949, Section 228.180, RSMo. 1990.

Claims for damages for taking such property shall be filed in the office of the clerk by the owner of the property within twenty (20) days after the last day of publication. Claims for damages shall be heard on the first day of any regular or adjourned term of the commission after the expiration of the twenty (20) day period.

If the parties are unable to agree on the amount of damages or if landowners fail to file a claim for damages, the county commission shall direct that the entire file be delivered to the circuit judge and the office of the clerk. Upon receipt, the judge shall set the cause for hearing within thirty (30) days thereof. If the hearing is set for the condemnation of a road, then it shall be filed in the office of the circuit clerk and the orders shall be served on all interested parties not less than ten (10) days before the date of the hearing. The hearing, itself, is consisted of a jury of six (6) disinterested residents of the county. The jury shall view the land, hear the evidence and determine the question of damages. Five (5) concurring members of the jury may return a verdict. In case of disagreement, another jury may be impaneled.

The circuit court may not inquire into the public necessity of the taking of the land. The only issue that may be addressed is the issue of damages. The judgment of the court is not reviewable on appeal.³³

Unlike other legal proceedings, the burden of proof lies with the landowners in proving that the disadvantages incident to the establishment of such road outweigh the advantages.³⁴

Conclusion

The Missouri Constitution provides the county commission with the power to establish and vacate public roads within their own physical jurisdictional limits. Even though one can view the statutory procedures to be fairly simple, parties desiring to establish or to vacate a public road must methodically follow each and every step of that particular procedure. Otherwise, the county commission will lose its jurisdiction to enter appropriate orders.

For concerns, questions or requests regarding establishing or vacating roads, contact the Randolph County Commission at 660-277-4722. You may also contact individual commissioners directly. Presiding Commissioner Susan Carter at 660-998-1403 or e-mail: susan.carter@randolphcounty-mo.gov; Eastern District Commissioner Doug Galaske at 573-881-8700 or e-mail: doug.galaske@randolphcounty-mo.gov; Western District Commissioner Randy Asbury at 660-273-9903 or e-mail: randy.asbury@randolphcounty-mo.gov.

³³ Section 228.180, RSMo. 1990.

³⁴ Jackson County v. Waldo, 85 Mo. 637, 638 (1885).

RANDOLPH COUNTY DRIVEWAY AND CULVERT POLICY

Section 1. General

Randolph County shall regulate the installation of all culverts located on county roads throughout the county.

Providing entrances from privately owned land to Randolph County Roads shall be the responsibility of the landowner.

The owner is responsible for providing the labor and materials (i.e. culverts, gravel, fill dirt, etc.) for the construction, installation and all future maintenance of the entrance.

It is the owner's responsibility to contact all utilities (1-800-DIG-RITE) before construction or installation begins.

Section 2. Permits

A driveway construction permit must be obtained from the Randolph County Clerk/911 Coordinator, prior to the construction of any driveway entrance (temporary or permanent).

Section 3. Site Inspection

Initial site inspection to determine culvert size, location, safety/site distance parameters and to ensure the culvert is located to conform to the existing ditch line (s) will be conducted by the Randolph County Road and Bridge Department.

All driveways shall be constructed in such a manner as not to direct drainage onto the roadway and any culverts installed by property owners not meeting the culvert specifications and/or causing drainage problems, may be removed as necessary to correct the drainage problem at the cost of the property owner.

After installation, an inspection of the site will be made for final approval.

Section 4. Specifications

All driveway culverts will be corrugated metal pipe, a minimum of 12 inches in diameter and a minimum of 24 feet in length (with a maximum length of 60 feet) unless otherwise authorized by the Randolph County Road and Bridge Department.

Section 5. Construction

All culvert installations must meet the requirements of the Randolph County Road and Bridge Department. Installations not meeting county standards are subject to removal at the owner's expense.

Section 6. Driveway and Culvert Construction Permit Fee Schedule

Fees Shall Include:

911/Administrative fee -	\$ 5.00
Permit and inspection fee -	<u>\$30.00</u>
Total	\$35.00

Coordinator/Inspection fees shall be paid prior to issuance of permit.

For concerns, questions or requests regarding the Driveway and Culvert Policy, please contact the Randolph County Clerks office at 660-227-4717 or they can be contacted via e-mail at clerk@randolphcounty-mo.gov.

**RANDOLPH COUNTY
DRIVEWAY INSPECTION APPLICATION FEE FORM**

Date: _____ Application Number: _____

Name of Property Owner: _____

Location of Property: _____

Telephone Number(s): _____

Owner's Signature: _____

Address: _____ City: _____ Zip: _____

FLOOD PLAIN: YES () NO ()

FLAGS ISSUED: YES () NO ()

RCHD SEWAGE APPLICATION: YES () NO ()

APPLICATION FEE: \$35.00

Make checks payable to:

Randolph County Commission
110 S. Main St. – Ste. F
Huntsville, MO 65259

For County Use:

1) Date of Initial Inspection: _____ Comments: _____

2) Date of Construction Inspection: _____ Comments: _____

3) Date of Final Inspection: _____ Comments: _____

RANDOLPH COUNTY DUST CONTROL POLICY

Residents desiring dust control on gravel roads are responsible for the costs of materials and application of environmentally friendly agents. They shall contact the Randolph County Road and Bridge Department one week in advance of agent application to allow the county operators to recondition the road before application.

Once the dust control agent is applied, county operators will not maintain the treated sections of road in order to allow the agent to accomplish its purpose. Regular road maintenance would resume when road conditions indicate normal maintenance is necessary.

For concerns, questions or requests regarding Dust Control contact the Randolph County Road and Bridge Department at 660-277-4724 or via e-mail at roadsupervisor@randolphcounty-mo.gov.

RANDOLPH COUNTY ICE CONTROL AND SNOW REMOVAL POLICY

Ice Control

Paved roads will be first priority for ice control. Sanding will not normally be applied to gravel roads with the exception of some hills, intersections and curves that may present a public hazard.

Snow Removal Policy

It is the policy of Randolph County to initiate snow removal operations to maintain traffic as long as visibility is above minimum and weather conditions are such that plowing can be done safely and be effective for at least five hours.

The Road and Bridge Supervisor, or his designee, has the responsibility for initiating all snow removal actions using his best judgment and considering all prevailing weather conditions, amount of snow fall, type of snow fall and what areas are affected most including the priority of which roads are plowed and in what sequence.

He will also commence operations at anytime when notified by the County Sheriff, due to emergencies or extreme conditions. Snow removal crews will provide necessary assistance such as opening a driveway or parking lot, to give access to the necessary emergency crews.

The general practice will be as follows: When snow fall is at least one inch, but less than three inches, hard surfaced roads will be plowed during normal working hours, provided that the prevailing winds are such that snow remains on the traveled portion of the road. With a snow fall of four inches or more, gravel roads, as well as hard surface roads will be plowed during normal working hours. At this time, plowing may commence before and after normal working hours, as well as on weekends and holidays. The snow removal operations will be initiated out of each county barn, as warranted.

County snow crews will not clear private driveways or private property, except in an emergency, as outlined previously. Snow placed in a driveway or on sidewalks by county plows, where the driveway or sidewalk meets the road, is the responsibility of the property owner to remove.

DISCLAIMER

To the extent that any previous rule, regulation, policy or past practice, written or unwritten, is in conflict with the provisions of this policy, such is hereby withdrawn, voided and all personnel should conduct themselves in conformity with this policy.

This policy is not intended to create any duty to any individual member of the public or to protect any particular or circumscribed class of persons. All or parts of this policy may

be affected by at least one or more of the following which will delay all or some of the services provided:

- 1) Equipment breakdown
- 2) Vehicles disabled in deep snow
- 3) Weather so severe as to cause crews to be called in from the county roads
- 4) Equipment rendered inadequate by the depth of snow or drifts
- 5) Crew breaks, and breaks required for refueling, refilling of material spreaders and installing chains and new blades
- 6) Unforeseen conditions and emergencies

The counties obligation to remove snow and/or ice from the roadways of the secondary road system takes precedence over accidental damage to privately owned fences, gates, mailboxes and abandoned or stranded vehicles. Reasonable care will be used to avoid damage to private property but due to the conditions of winter, the county assumes no liability in the event damage occurs unless it can be established that operator negligence was the primary reason for the damage.

For concerns, questions or requests regarding Ice Control or Snow Removal contact the Randolph County Road and Bridge Department at 660-277-4724 or via e-mail at roadsupervisor@randolphcounty-mo.gov.

RANDOLPH COUNTY SIGN POLICY

County residents requesting traffic regulatory signs including stop and speed limit signs shall obtain petition signatures from one-half plus one of the residents residing on the road for which the sign is requested.

Other Signs:

School Bus Stop – Randolph County may supply and install a “School Bus Stop” sign at no charge under the following conditions:

1. A formal request is made by the school district; and,
2. The Randolph County Road and Bridge Department Supervisor confirms the request meets sight distance requirements per the Manual on Uniform Traffic Control Devices (MUTCD) (<http://mutcd.fhwa.dot.gov>),

“Children at Play” signs are available upon request. Residents requesting a sign must pre-pay the cost of the sign and post at their expense. County labor for installation shall be at a pre-paid cost of \$50.00. Sign and installation expenses associated with subsequent installations shall be borne by the landowner.

Private road signs shall be installed at no cost to the landowner for the first installation. Sign and installation expenses associated with subsequent installations shall be borne by the landowner.

For concerns, questions or requests regarding signs, please contact the Randolph County Commission at 660-277-4722. You may also contact individual commissioners directly. Presiding Commissioner Susan Carter at 660-998-1403 or e-mail: susan.carter@randolphcounty-mo.gov; Eastern District Commissioner Doug Galaske at 573-881-8700 or e-mail: doug.galaske@randolphcounty-mo.gov; Western District Commissioner Randy Asbury at 660-273-9903 or e-mail: randy.asbury@randolphcounty-mo.gov.

RANDOLPH COUNTY BRUSH REMOVAL POLICY

Randolph County may clear brush from county right-of-way; however, the county shall not clear brush from landowner fencerows for the landowner's personal benefit.

For concerns, questions or requests regarding Brush Removal contact the Randolph County Road and Bridge Department at 660-277-4724 or via e-mail at roadsupervisor@randolphcounty-mo.gov.

RANDOLPH COUNTY RIGHT-OF-WAY DESTRUCTION POLICY

Per Missouri Statute 49.490

Any person who shall knowingly remove, tear up or otherwise destroy or damage a bridge, culvert, ditch, sidewalk, road embankment or dirt, gravel or paved road, crosswalk, stepping stones or traffic signs in or upon any road, street, avenue, thoroughfare or alley within the county road right-of-way of Randolph County, without having lawful authority to do so, shall be deemed to have damaged the property of the county and shall be liable for the penalties stated in Missouri Statute 49.490 which follows.

49.490. If any person commit any waste, trespass or other injury in or upon any county buildings or other property belonging to any county, he shall forfeit and pay, to the use of the county, fourfold damages, to be recovered in the name of the county, in such form of action as individuals may maintain for like injuries to their property.

(RSMo 1939 § 13731)

Prior revisions: 1929 § 12072; 1919 § 9472; 1909 § 3693

GLOSSARY

County Road or County-Maintained Road – Any public road for which Randolph County has assumed responsibility for repair, maintenance or improvement.

County Un-maintained Road – Any public county road for which Randolph County has not assumed responsibility for repair, maintenance or improvement.

Public Road – Any roadway and its associated right-of-way that is dedicated to public use and used by the public without regard to whether it is a county-maintained road or otherwise maintained at government expense. A public road need not be a county-maintained road as defined in these regulations.

Private Road – a roadway that is not dedicated to public use serving two or more tracts of land.

Private Driveway – A roadway used for ingress and egress typically serving a single tract or parcel; or that provides vehicular circulation within.

Road or Roadway – That portion of any right-of-way or private road which is paved, graveled or otherwise surfaced by some means to comprise a road or street for use by vehicular traffic and which is typically identified by a road or street name.

Right-of-Way – All land within a corridor with boundaries defined by use or surveyed description which is established by plat, written deed, easement, instrument of public dedication or prescriptive use that is used for public roadway purposes and other subordinate permissible use.

Easement – Permanent – A grant by a property owner to the public over a specific tract of land for a specific use or purpose of indefinite duration.

Easement – Temporary – A grant by a property owner to the public or other person or entity over a specific tract of land for a specific use or purpose for a specific time frame.

WHO TO CONTACT

For concerns, questions or requests regarding the Driveway and Culvert Policy please contact the Randolph County Clerks office at 660-227-4717 or they can be contacted via e-mail at clerk@randolphcounty-mo.gov.

For concerns, questions or requests regarding policies regarding Dust Control, Ice Control, Snow Removal or Brush Removal contact the Randolph County Road and Bridge Department at 660-277-4724 or via e-mail at roadsupervisor@randolphcounty-mo.gov.

For all other matters, please contact the Randolph County Commission at 660-277-4722. You may also contact individual commissioners directly. Presiding Commissioner Susan Carter at 660-998-1403 or e-mail: susan.carter@randolphcounty-mo.gov; Eastern District Commissioner Doug Galaske at 573-881-8700 or e-mail: doug.galaske@randolphcounty-mo.gov; Western District Commissioner Randy Asbury at 660-273-9903 or e-mail: randy.asbury@randolphcounty-mo.gov.