

In reply you are advised that the county commissioners have jurisdiction to vacate the diagonal road passing said farm. Section 6860 of the General Code, in regard to the location, alteration and vacation of roads, provides as follows:

"The county commissioners shall have power to locate, establish, alter, widen, straighten, vacate or change the direction of roads as hereinafter provided. This power extends to all roads within the county, except the intercounty and main market roads."

It seems evident, therefore, that in answer to your first question, the county commissioners of Wayne county have authority to vacate the road in question.

In order to establish and construct the new road, however, authority must be obtained from the state to take over the possession of the state lands necessary for locating said road. The county commissioners ordinarily are authorized to condemn land in order to establish roads. However, in this instance the lands belong to the state, and the county commissioners are not authorized to condemn state lands for road purposes.

In 20 Corpus Juris, page 620, it is stated that:

"The generally accepted doctrine is that lands owned by the state cannot be taken for a public use under a general power to condemn land. There must be express statutory authority or the authority must arise from necessary implication, especially when land is in actual use by the state for a public purpose, and is sought to be condemned for another, and inconsistent use."

There is no express statutory authority by which county commissioners may condemn state lands for road purposes.

In your second question you inquire whether action by the General Assembly can be resorted to in this case. You are advised that the legislature would have authority to permit the disposal of the strip of land necessary for the location of the new road, and it is suggested that in order to carry out the proposed establishing and locating of the new road across the state's land that the necessary procedure be taken to have the legislature grant the necessary authority.

Respectfully,
EDWARD C. TURNER,
Attorney General.

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APPROVAL, BONDS, VILLAGE OF COALTON, JACKSON COUNTY,
\$5,000.00.

COLUMBUS, OHIO, February 11, 1927.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.