



**COUNTY JUDGES ASSOCIATION OF ARKANSAS  
2021 ROAD LAW GUIDEBOOK  
JUDICIAL ETHICS,  
LANDLOCKED CASES AND EMINENT DOMAIN:**

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**June 15, 2021**



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**I. JUDICIAL CONDUCT/CANONS OF ETHICS**  
**See: "Arkansas.gov/jddc" {55 PAGES}**

**CANON ONE: A JUDGE SHALL UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY.** An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe those standards so that integrity and independence of the judiciary will be preserved.

**CANON TWO: A JUDGE SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL OF THE JUDGE'S ACTIVITIES.**

**CANON THREE: A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY AND DILIGENTLY.** The judicial duties of a judge shall take precedence over the judge's other activities. The judge's judicial duties shall include the duties of the judge's office prescribed by law. The judge has adjudicative responsibilities to: hear and decide cases except when disqualification is required. A judge shall be faithful to the law and maintain professional competence. A judge shall not be swayed by public interests, fear, criticism or partisanship. A judge shall require order and decorum. A judge that manifests any bias impairs the fairness of the proceedings. A judge should avoid prejudicial behavior. A judge shall provide persons with rights the opportunity to be heard. Ex parte communications are prohibited, except non-substantive matters such as scheduling, etc. A judge may obtain the advice of a disinterested expert.

**CANON FOUR: A JUDGE SHALL CONDUCT THE JUDGE'S EXTRA-JUDICIAL ACTIVITIES SO AS TO MINIMIZE THE RISK OF CONFLICT WITH THE JUDICIAL OPERATIONS.** A judge should avoid conducting extra-judicial activities so they avoid casting doubt upon impartiality; demean the judicial office; or interfere with judicial duties.

**CANON FIVE: A JUDGE OR JUDICIAL CANDIDATE SHALL REFRAIN FROM INAPPROPRIATE POLITICAL ACTIVITY.**

In *Ferguson v. State*, 2016 Ark. 319, 498 S.W.3d 733 (Ark. 2016) the court explains that under canon 2, when a judge excuses himself or herself from a bench trial and orders a jury trial because a party does not believe he or she can be impartial, the party's questioning of impartiality is reasonable and the judge should recuse himself or herself from the case.

In *Arkansas Judicial Discipline and Disability Commission v. Proctor*, 360 S.W.3d 61 (Ark. 2010) the court explained that a

judge's continuous and inappropriate involvement in rehabilitating probationers inside and outside the courtroom is a violation of canon 4, showing the judge is putting his personal beliefs of rehabilitation above his judicial duties. A judge's involvement in extrajudicial activities violates canon 4 when he or she spends outside time with probationers, talks with them, and teaches classes to them because these probationers are typically defendants in cases the judge presides over.

## **II. Judicial Powers and Restrictions: Overview**

County judges in Arkansas have the duty to act in a judicial capacity over the following types of disputes, including: road matters, tax disputes, annexation, eminent domain, claims against the county (disbursement of appropriated county funds); and other special matters assigned by law. County judges in Arkansas receive no formal legal training and frequently lack access to legal counsel to assist. Many counties have only legal counsel assigned to the Quorum Court under Ark. Code § 14-14-903(b)(3): "The legal counsel of the quorum court shall: attend all regular and special meetings of the quorum court; perform all duties prescribed by this chapter; and perform all other duties as may be required by a quorum court".

County judges are under mandate of the Arkansas Constitution under Article 7, § 28 to hear cases and to afford parties procedural due process, yet they are provided little means to accomplish those tasks. The purpose of this material is to assist the county judges in their judicial obligations.

**Amendment 5 of the Constitution of the United States:** *"No person shall...be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use, without just compensation."*

**Article 2, §22 of the Constitution of Arkansas:** *"The right of property is before and higher than any other constitutional sanction; and private property shall not be taken, appropriated or damaged for public use, without just compensation."*

**Amendment 55:** Authority and exclusive control over county roads was given to the County Judge by Amendment 55, Section 3, of to the Arkansas Constitution: "The County Judge ... shall ... operate the system of county roads ...."

**Article 7, §28:** Article 7, §28 of the Arkansas Constitution provides: "The county courts shall have exclusive original jurisdiction in all matters relating to county taxes, roads, bridges, ferries, paupers, bastardy, vagrants, the apprenticeship of minors, the disbursement of money for county purposes, and every other case that shall be necessary to the internal improvement and local concerns of the respective counties."

III.

**PETITION FOR "LANDLOCKED" EASEMENT  
UNDER ARK. CODE § 27-66-401 et. seq.**

The right of a person for a road to landlocked property was adopted by the General Assembly in 1871. In years past the county judges being mindful of due process have each fashioned some type of procedure.

Amendment 5 of the U.S. Constitution provides: "No person shall be...deprived of life, liberty or property without due process of law". {Procedural Due Process} "nor shall any private property be taken for public use, without just compensation". {Substantive Due Process}. Ark. Code § 27-66-401 et. seq. provides:

- Burdens upon the petitioner (i.e., that is to not assume that the petitioner is legally "landlocked". Require some demonstration on the threshold issue that the lands are landlocked--before appointing viewers, assuming jurisdiction and entertaining the merits of the case);
- ascertain which cases should be heard in county court vs. circuit court;
- explicitly provide for the use of a court ordered stay or dismissal without prejudice;
- provide for a fair and expeditious manner for assuring the payment of viewers;
- provide for a fair and ethical means for affixing the initial and ultimate deposits; and
- provide for sufficient description of the easement in the viewers' report and the order (to protect order for appeal and future enforceability).

**Arkansas Code §§ 27-66-401, 402 and 403.**

**27-66-401. Establishment.** (a)(1) When the lands, dwelling house, or plantation of any owner is so situated as to render it necessary to have a road from such lands, dwelling house, or plantation to any public road or navigable watercourse over the lands of any other person and the other person refuses to allow that owner the road, the owner may petition the county court to appoint viewers to lay off the road, provided the owner gives written notice to the person twenty (20) days before application to the court and attaches the written notice to the petition. (2) The written notice shall include the amount of payment the owner offers for the road.(b) The petition for an easement for ingress and egress to and from the petitioner's lands over, through, and across the respondent's lands to any public road or navigable watercourse shall be filed with the clerk of the county court and shall allege with particularity facts demonstrating that:(1) The written notice was provided by the petitioner to the respondent twenty (20) days before application to the court;(2) The respondent refused to convey to the petitioner the requested access easement; and(3) The petitioner lacked the legal right of ingress and egress to and from his or her lands across the respondent's lands or otherwise to a public road.(c) Copies of abstracts, deeds, or plats referenced in the petition shall be attached to the petition.(d) After the petition is filed, the county court shall issue a notice setting the time, date, and location of a preliminary hearing, and the hearing shall not be any earlier than sixty (60) days from the date of the petition filing.(e)(1) In accordance with the Arkansas Rules of Civil Procedure, the petitioner shall serve the resident or nonresident respondent with a:(A) Summons;(B) Copy of the petition and any exhibits; and(C) Copy of the court notice of the preliminary hearing.(2) If service is not obtained, the notice shall be published one (1) time per week for two (2) consecutive weeks in a newspaper of general circulation in the county at the petitioner's expense. If there is no newspaper of general circulation in the county, the notice shall be posted at the county courthouse.(f)(1) The court may dismiss the case without prejudice and allow the petition to be refiled within one (1) year from dismissal if the court determines at the preliminary hearing that:(A) Required notices and service have not been provided to the respondent; or(B) The petition fails to sufficiently demonstrate the requirements of subsection (b) of this section.(2)(A) If the court determines at the preliminary hearing that required notices and service have been provided to the respondent and the petition sufficiently demonstrates the requirements of subsection (b) of this section, the court shall appoint viewers as provided by this section. ii. The court shall

give each party at least ten (10) business days to submit up to three (3) potential viewers. (iii) The Court shall give due consideration to all potential viewers that were submitted by the parties and shall select one (1) of the potential viewers submitted from each party and one (1) or more viewers selected by the court for a total of three (3) viewers. (B) If viewers are appointed by the court, the court shall: (i) Issue a preliminary order directing the landlocked petitioner to deposit into the registry of the court an estimated sum sufficient for payment of damages and for payment of the costs and expenses accruing on account of:

(a) Viewer's fees and expenses;

(b) Survey costs;

(c) Damages related to the adjoining landowners property, including without limitation an estimate of:

(1) The loss of property value for the area of the acquisition;

(2) The loss of exclusive use of the adjoining owner will realize; and

(3) Damages to the owner's remaining property; and

(d) Notice and publication costs, if any;

(ii) Set the time, date, and location of the evidentiary hearing.

(iii) Require the funds deposited to be used exclusively for the purposes stated under this subsection.

(C) Either party may file with the court legal instruments, plats, surveys, or other documentary evidence to be reviewed by the viewers. (D) The parties shall immediately open their property to inspection by the viewers and surveyors.

**History.** Acts of 1871, Act 26, § 60, p. 56; Acts of 2009, Act 747, § 1, eff. July 31, 2009; Acts of 2013, Act 1083, §§ 1, 2, eff. Aug. 16, 2013.

**27-66-402. Duty of viewers.** (a) Viewers shall take the same oath and shall be governed in all respects as viewers appointed to public roads are governed under this act. (b) They shall examine the route proposed for the road and any other route which they may deem proper. (c) If a majority of the viewers state under oath that an access easement is necessary and proper, as prayed in the petition, the viewers shall lay out and describe the access easement in a manner that produces the least inconvenience, damage, and devaluation of the property to the adjoining owners. (d) (1) (A) The viewers shall make a written report to the county court, describing the route of the road and the land through which it shall pass to allow location and identification of the access easement by land records, naming the owner, if known, and by decision of a majority of the viewers the damages sustained by



each owner of lands through which the road passes. The damages shall include the value of each owner's land sought to be appropriated.(B) The parties shall stipulate to or dispute the report of the viewers. (ii) Each party shall be given at least ten (10) business days to respond in writing to the viewers' report. (2) The measure of damages shall be the difference in the fair market value of the lands immediately before the access easement is ordered and the fair market value of the lands after the access easement is ordered.(e) The report shall be filed with the county clerk for the records of the county court.(f)(1) A person who renders services under this subchapter as a viewer or reviewer, chain carrier, marker, or surveyor shall be paid reasonable costs and expenses based upon the current market rate for each day necessarily employed.(2) Payments are to be charged as costs and expenses against the funds deposited by the petitioner.(3) The amount due each person and the number of days employed shall be certified under oath by the viewers.(4) The court by order may direct the county clerk to receipt payment by the petitioner of the directed sum into the registry of the court and to issue payment.

**History.** Acts of 1871, Act 26, § 60, p. 56; Acts of 2009, Act 747, § 1, eff. July 31, 2009; Acts of 2013, Act 1083, §§ 3, 4, eff. Aug. 16, 2013.

Formerly C. & M. Dig., § 5250; Pope's Dig., § 6976; A.S.A. 1947, § 76-110.

**27-66-403. Court order.** (a) (1) If the petitioner has not complied with the court's order under § 27-66-401 and paid into the registry of the county court the estimated sum, the court may dismiss the case without prejudice and provide that the matter may be refiled within one (1) year from dismissal in accordance with the Arkansas Rules of Civil Procedure.(2) If during the pendency of the proceedings the county court determines that the circuit court has jurisdiction over the matter, the county court may stay the proceedings or dismiss the case without prejudice and provide that the matter may be refiled within one (1) year from dismissal in accordance with the Arkansas Rules of Civil Procedure.(3) (A) The evidentiary hearing may be held. **If:**

(a) At least sixty (60) days passed since the initial petition was filed;

(b) The landlocked petitioner has complied with the court's order under aca 27-66-401; and

(c) The landlocked petitioner has deposited the estimated sum under aca 27-66-401.

(ii) At the evidentiary hearing, all parties shall have the opportunity to present evidence and cross-examine witnesses.

(B) (i) If after considering the report of the viewers, the evidence, the law, and all other proper and sufficient matters the court is of the opinion that it is necessary for the petitioner to have the road from his or her lands, dwelling house, or plantation to the public road or navigable watercourse, an order is to be made establishing the road not to exceed fifty feet (50') in width and determining the damages sustained by each owner of lands through which the access easement passes. (ii) (a) The access easement of ingress and egress to and from the petitioner's lands to, through, over, and across the respondent's lands shall be described in the final order or judgment of the court and shall be appurtenant to the petitioner's lands. (b) (1) The order shall direct return of excess funds, if any, to the petitioner and any further deposits necessary to be made by the petitioners for the payment of all costs and expenses, including reasonable attorney's fees and costs, accruing and remaining unpaid on account of the petition for the road, and all things relating thereto and following therefrom, including the view and survey of the road and damages sustained by each owner of the lands over which the road passes. (2) (A) If the respondent substantially prevails on the disputed issues in the case, the court shall award reasonable attorney's fees and costs to the respondent. (B) In determining whether the respondent substantially prevails on the disputed issues, the court shall consider the respondent's success on the merits regarding the: (i) Necessity of the road; (ii) Route of the road; (iii) Width of the road; and (iv) Damages to the lands over which the road passes. (c) The order shall state that: (1) The respondent retains title to the lands over which the road passes; and (2) The road is for an access easement only and is not an easement for any other purpose, including a public utility. (iii) The petitioner shall be solely responsible for the maintenance of the road established under this subchapter. (iv) The respondent shall have no responsibility for the maintenance of the road established under this subchapter. (v) A user of the road does so at his or her own risk and peril and does not have the right to file a cause of action against the petitioner or respondent for any injury to the user or the user's property. (b) Either party may appeal to the circuit court from the final order or judgment of the county court within thirty (30) days from the entry of the order and not thereafter. (2) The review by the circuit court shall be de novo and for strict compliance with this subchapter and any additional violations of the due process rights of the parties. **History.** Acts of 1871, Act 26, § 61, p. 56; Acts of 1927, Act 216, § 1; Acts of 1955, Act 125, § 1; Acts of 2009, Act 747, § 1, eff. July 31, 2009; Acts of 2013, Act 1083, §§ 5, 6, eff. Aug. 16, 2013. Formerly C. & M. Dig., § 5251; Pope's Dig., § 6977; A.S.A. 1947, § 76-111.

## **Arkansas Cases and Attorney General Opinions:**

In *Yates v. Sturgis*, 311 Ark. 618, 846 S.W.2d 633 (Ark. 1993) the court explains the county court has the power of eminent domain to allow access to landlocked parcels.

In *Bean v. Nelson*, 307 Ark. 24, 817 S.W.2d 415 (Ark. 1991) the court found the private road was necessary despite there being alternative routes because such alternative route would be costly to the other party. But see *Armstrong v. Harrell*, 648 S.W.2d 450 (Ark. 1983), the Supreme Court of Arkansas upheld the denial of plaintiffs' petition to establish a road across the property of a school even though the only other alternate route across their land would be expensive. The proposed route across the school district's land would have been much cheaper and yet the court still denied the proposed road because it would inconvenience the school district and would pose a threat to the school children.

See also: **Ark. Op. Att'y Gen. No. 93-115**: explaining property which is already being used for a public purpose is generally not subject to eminent domain but may be under certain circumstances when the proposed public use is balanced with the old one. Additionally, when determining whether property already in public use is subject to eminent domain, the primary question is the position of the condemner and its proposed use of the land in question. If the condemner is seeking to destroy the existing public use or interfere with it to the extent that it would be practically destroyed, eminent domain may not be exercised unless specifically authorized by the legislature. If the uses may co-exist, then eminent domain may be exercised without a specific grant of power from the legislature. If the proposed use is substantially the same as the existing public use, then eminent domain may not be exercised because it would be equivalent to a transferring of the property without public benefit.

In *Attaway v. Davis*, 288 Ark. 478, 707 S.W.2d 302 (Ark. 1986), the circuit judge ruled that when the appellee's right to obtain access arises from her status as a landlocked owner and is of a continuing nature, no statute of limitations is applicable.

In *Dowling v. Erickson*, 278 Ark. 142, 644 S.W.2d 264 (Ark. 1983), plaintiff challenged the county court's grant of a petition to build a road across his land in order to provide access to a neighboring landowner's landlocked parcel. plaintiff claimed the county could not use eminent domain to establish a road across his land because it was not for public use. However, the Supreme Court of Arkansas has consistently held that a county court may establish

a road for private use when a landowner has no other means of access to his parcel and where anyone having the occasion to use the road established under this statute may do so. In other words, if the general public has access to use the road, it is not truly private and cannot be said that it is not for public use, even if it only benefits one plaintiff. Furthermore, the court in *Pippin v. May*, 78 Ark. 18, 93 S.W. 647 (1906), defined the distinction between public and private use: "The character of a road, whether public or private is not determined by its length or the places to which it leads, nor by the number of persons using it. If it is free and common to all citizens, it is a public road eventhough but few people travel upon it."

In *Smith v. Arkansas Midstream Gas Services Corp.*, 210 Ark. 256, 377 S.W.3d 199 (Ark. 2010), the Supreme Court of Arkansas held that whether private property is taken for public or private use is a judicial question. Though eminent domain statutes are strictly construed in favor of the land owner, the owner still bears a heavy burden of proving that the taking was not for a public use. As discussed above, if the road is available for all members of the public to use, the court will probably consider its use public. In this case, the plaintiffs challenged the gas company's ability to apply for a petition to create a right of way across their land for the purposes of constructing a natural gas pipeline which would transmit gas to certain parts of White County. The plaintiffs alleged the gas company could not practice eminent domain as a private company seeking the petition for a private purpose. The plaintiffs considered the pipeline to be private because it served a population less than the general public and it was not open for the public to use, but the court rejected this argument, relying on the decision in *Linder v. Arkansas Midstream Gas Services Corp.*, 210 Ark. 117, 362 S.W.3d 889 (Ark. 2010).

In *Burton v. Hankins*, 98 Ark. App. 51, 250 S.W. 3d 255, the Court of Appeals of Arkansas rejected appellants' argument that they should be entitled to a road across appellee's land because they could not travel from the east side of their parcel to the west side due to swampy conditions. The test set forth for necessity in Ark. Code Ann. §§ 27-66-401 to 404 is not whether a landowner can travel across every part of his or her property, but rather the statute provides that a road may be opened if a landowner has no access from his property to a public road.

**Ark. Op. Att'y Gen. No. 2008-062:** The Attorney general says that the question of necessity is one for the county court to decide, after applying the appropriate analysis set by the AR Supreme

Court. The county court's discretion is not absolute, but it does allow the county court the power of eminent domain to allow access to landlocked tracts.

#### IV. PETITION TO VACATE ROAD UNDER ARK CODE § 14-298-117

**Vacating a Road:** When 10 citizens residing in that portion of the county consider a road **useless**, they may petition the county court to vacate the road. The petition must state why the road needs to be vacated. The petition must be publicly read at a regular session of the county court, with proof that proper notice was given. If no objections are made, then the county court can order the road be vacated at the next regular session of court. If objections are made in writing, the court must appoint 3 viewers (same procedures followed). If viewers are in favor of vacating, the court may order the road be vacated. The costs thereof and expenses incident thereto shall be paid by the petitioners unless the county court shall order the costs and expenses paid out of the county treasury. **History.** Acts of 1871, Act 26, § 58, p. 56; Acts of 2005, Act 1200, § 10, eff. Aug. 12, 2005. **Formerly** C. & M. Dig., § 5247; Pope's Dig., § 6966; A.S.A. 1947, § 76-918.

**14-298-101. County court's authority.** All public roads and highways shall be laid out, opened, and repaired agreeably to the provisions of this chapter. The county court of each county in this state shall have full power and authority to make and enforce all orders necessary as well for establishing and opening new roads as for changing and vacating any public road or part thereof. **History.** Acts of 1871, Act 26, § 2, p. 56. **Formerly** C. & M. Dig., § 5226; Pope's Dig., § 6941; A.S.A. 1947, § 76-901.

**14-298-102. Notice prerequisite to petition for county road.** (a) Previous to any petition being presented for a county road, or for the alteration or vacation of a county road, notice thereof shall be given by publication in some newspaper, published in the county, if one exists. (b) If there is no newspaper published in the county, then notice shall be given by advertisements set up in three (3) public places in each township through or into which any part of the road is designed to be laid out, altered, or vacated, stating the time when the petition is to be presented and the substance thereof. Notice shall be duly authenticated and presented with the petition to the county court. **History.** Acts of 1871, Act 26, § 45, p. 56. **Formerly** C. & M. Dig., § 5230; Pope's Dig., § 6945; A.S.A. 1947, § 76-904.

**14-298-103. Application petitions--Bond requirement.** (a) All applications for laying out, viewing, reviewing, altering, or vacating any county road shall be by petition to the county court, signed by at least ten (10) freeholders of the county. (b) One (1) or more of the signers to the petition shall enter into bond, with sufficient security, payable to the State of Arkansas for the use of the county. This bond shall be conditioned that the persons making the application for a view, review, alteration, or vacation of any road shall pay into the treasury of the county the amount of all costs and expenses accruing on the view, review, alteration, or vacation. In case the prayer of the petitioners shall not be granted, or when the proceedings had in pursuance thereof shall not be finally confirmed and established, and, on neglect or refusal of the persons so bound, after a liability shall have accrued, to pay into the treasury, according to the tenor of the bond, all costs and expenses that shall have accrued, the county clerk shall deliver the bond to the prosecuting attorney of the circuit, whose duty it shall be to collect and pay over the bond to the county treasury.

(c) In all cases of contest, the court having jurisdiction of the case shall have power to render judgment for costs, according to justice, between the parties.

**History.** Acts of 1871, Act 26, § 43, p. 56. **Formerly** C. & M. Dig., § 5228; Pope's Dig., § 6943; A.S.A. 1947, § 76-902.

**Ark. Code § 14-298-117. Vacation of road.** (a) (1) When any county road or any part of any county road is considered "**useless**", any ten (10) citizens residing in that portion of the county may make application by petition agreeable to § [14-298-124](#) to the county court to vacate the road, setting forth in the petition the reason why the road ought to be vacated. (2) The petition shall be publicly read by the county court at the hearing on the petition, with the proof of notice and publication required by this chapter. (b) **If no objections are made and filed**, the county court **may** declare the road vacated, or any part thereof that it may deem necessary.

(c) If objection is made in writing, the county court **shall** appoint three (3) viewers to view the road who shall proceed, after taking the oath or affirmation required by this chapter, to view the road as aforesaid and make written report of their opinion thereon, and their reason for the opinion, to the county court. If the viewers shall report in favor of vacating the road, or any part thereof, the court, if it deems the report reasonable and just, **may** declare the road, or any part thereof, vacated, **agreeable** to the report of the viewers. (d) The costs thereof and expenses incident thereto

shall be paid by the petitioners unless the county court shall order the costs and expenses paid out of the county treasury.

**History.** Acts of 1871, Act 26, § 58, p. 56; Acts of 2005, Act 1200, § 10, eff. Aug. 12, 2005. **Formerly** C. & M. Dig., § 5247; Pope's Dig., § 6966; A.S.A. 1947, § 76-918.

**Some Potential Legal Issues in Vacating the Road..include:**

- Notice; Compliance with the procedure prescribed by law;
- Affording the parties a meaningful opportunity to be heard;
- Will vacating the road result in the termination of ingress/egress to a party?;
- Will vacating the road result in the taking of a property right, i.e., the taking an easement of a party to and from the county road?

**Arkansas Cases:**

In *Perry v. Lee County*, 71 Ark. App. 47 (2000), the court held that the petition of 6 freeholders did not comply with the explicit requirements of the law of a petition by (10) ten freeholders. Where only (6) six freeholders signed the petition to vacate a county road, rather than the (10) ten required by statute, the county court did not have jurisdiction to vacate the road and therefore, the judgment was reversed.

**Questions:** Are there ten (10) citizens? Do the ten (10) or more petitioners reside in that portion of the county? Was proper or adequate notice provided?

Is the road useless? Is there a taking of an easement from lands to the subject county road? What costs shall the petitioners pay? What costs, if any, shall the county pay?

In *Myers v. Bogner*, 2011 Ark. App. 98 (2011), the Court of Appeals ruled that the petitioners and county judge applied the wrong statute. The county judge's order was void, the county court should have followed the procedures under Ark. Code § 14-298-101 through 14-298-125 for closing county roads. Instead, the petitioner and county court applied Ark Code § 14-18-101 thorough 14-18-106 for vacating roads in platted subdivisions outside of municipalities. Further, the petitioner failed to comply with the notice requirements under ARCP Rule 4 on warning orders. The Court

did not have subject matter jurisdiction or jurisdiction over the party defendants.

In *Reding v. Wagner*, 350 Ark. 322 (2002), the road in question was clearly not "vacated" or closed in this case. The county judge's order makes clear that it was "changed," thereby invoking § [14-298-120](#), not § [14-298-117](#). A county judge's executive authority, under Amendment 55, Section 3, and under Ark. Code Ann. § [14-298-120](#), to make changes in the routes of old county roads is not negated by Ark. Code Ann. § [14-298-117](#). Section [14-298-117](#) is merely a procedure whereby any ten citizens may make application by petition asking the county judge to vacate a road, and it in no way conflicts with Ark. Code Ann. § [14-298-120](#) (this law is for purposes of opening new roads, making changes in old roads the county judge deemed necessary and proper, and classifying roads and bridges, etc. In short, county judges in Arkansas are given the executive power to make discretionary decisions regarding the operation of the system of county roads. We, therefore, hold that the trial court did not err when finding that there was no evidence of abuse or misuse of the county judge's discretion in this case wherein the county judge ordered that the road in question be "changed, altered and relocated." The county judge changed, altered and relocated a section of the road to better serve the public in both safety and maintenance costs, etc. We affirm.

In *Brown v. Hicks*, 2011 Ark 41 (2011), the Supreme Court of Arkansas explained that Ark Code § 14-298-117 does not require the citizens objecting to the vacation of a county road to be citizens of the county where the segment of the county road is located. Ark Code § 14-298-117 only requires that the persons signing the petition be citizens of the county and residing in that portion of the county. There is no county citizenship requirement that the objecting parties reside in the county where the subject segment of county road is located.

In *Gillam v. Wyrick*, 2005 WL 238147 (2005) the Arkansas Court of Appeals declared the county court order void for lack of subject matter jurisdiction. Ark Code § 14-298-103(a) requires that: "All applications for laying out, viewing, reviewing, altering, or vacating any county road shall be by petition to the county court, signed by at least ten (10) freeholders of the county." These requirements are reflected again under Ark Code § 14-298-117. There was only one petitioner to sign the petition in the subject county court case to vacate the subject road. The county court, circuit court and courts on appeal all lack jurisdiction in the absence of compliance with the law.



**V. PETITION TO VACATE PLATTED ROADS: ARK CODE § 14-18-105**

**14-18-105. Authority to vacate street, alley, or roadway.** In all cases where the owner of lands situated in a county and outside of a city of the first or second class or incorporated town has dedicated a portion of the lands as streets, alleys, or roadways by platting the lands into additions or subdivisions and causing the plat to be filed for record in the county and any street, alley, or roadway, or portion thereof shown on the plat so filed shall not have been opened or actually used as a street, alley, or roadway for a period of five (5) years, or where any strip over the platted lands, although not dedicated as a street, has been used as a roadway, the county court shall have power and authority to vacate and abandon the street, alley, or roadway, or a portion thereof, by proceeding under the conditions and the manner provided in this chapter. **History.** Acts 1945, No. 164, § 1; 1965, No. 129.

**14-18-106. Petition to vacate street, etc.** (a) (1) The owners of all lots and blocks abutting upon any street, alley, or roadway, or portion thereof, desired to be vacated shall file a petition in the County court requesting the court to vacate it. (2) The petition shall clearly designate or describe the street, alley, or roadway, or portion thereof, to be vacated, give the name of the addition in which they are located and the date the plat was filed, and attach as an exhibit a certified copy of the plat. (b) (1) Upon the filing of the petition, the county clerk shall promptly give notice, by publication once a week for two (2) consecutive weeks in some newspaper published in the county and having a general circulation therein, that the petition has been filed and that on a certain day therein named the county court will hear all persons desiring to be heard on the question of whether the street, alley, or roadway, or portion thereof, shall be vacated. (2) The notice shall give the names of property owners signing the petition, clearly describe the street, alley, or roadway, or portion thereof, to be vacated, and give the name of the addition in which they are located. **History.** Acts 1945, No. 164, § 2

**14-18-107. Determination on vacation of street, etc.** (a) At the time named in the notice, the parties signing the petition and any other parties owning lots or blocks in the platted lands not abutting on the streets, alleys, or roadways, or portions thereof, to be vacated or otherwise affected by the vacation shall be heard; and the court shall determine whether the streets, alleys, roadways, or portion thereof, should be vacated as proposed in the petition. (b) No street, alley, or roadway, or portion thereof, shall be vacated if the court finds

that it would be against the interest of the public or that no means of ingress and egress would be left to any lots in the addition not abutting on them, unless the owners of the lots file their written consent to the vacation with the court.

**History.** Acts 1945, No. 164, § 3.

**14-18-108. Order vacating streets, etc.** (a) If the county court shall find that the petition should be granted, either in whole or in part, it shall enter an order vacating the streets, alleys, roadways, or portions thereof. (b) (1) The finding and order of the county court shall be conclusive on all parties having or claiming any rights or interest in the streets, alleys, roadways, or portions thereof, vacated. However, an appeal may be taken to the circuit court and perfected within thirty (30) days from the entry of the order, and an appeal may be taken from the circuit court to the Arkansas Supreme Court and perfected within thirty (30) days from the entry of the order of the circuit court.

(2) A certified copy of the order shall be filed in the office of the recorder of the county and recorded in the deed records of the county. (c) (1) The costs of the publication of the notice, the recording of the order, and the court costs shall be paid by the petitioners. (2) The court costs shall be paid by parties who unsuccessfully contest the petition.

**History.** Acts 1945, No. 164, § 4.

**14-18-109. Abutting lots reduced to acreage.** (a) The owners of all lots abutting on the streets, alleys, or roadways, or portions thereof, vacated by an order of the county court, as provided for in § [14-18-108](#), shall have the right to have reduced to acreage such lots and the streets or alleys so vacated by petition to the county court where the property is situated. (b) The county court shall promptly hear the petition and, upon proper showing that it is signed by all of the owners, shall order that the lots and streets, alleys, or roadways be reduced to acreage, and they shall thereafter be assessed as acreage for taxation of all kinds. (c) The petition may be included in the petition for the vacation of the streets, alleys, or roadways, and the order may be included in the order vacating it, or the petition may be filed and the order entered separately. **History.** Acts 1945, No. 164, § 5. **Formerly** A.S.A. 1947, § 17-1209.

**14-18-110. Validating return of platted land to acreage.** (a) In all cases where land theretofore platted into lots and blocks has been returned to acreage under the order of the county court in which the land lies and where the return to acreage did not involve the closing of any public road or thoroughfare, the action of the court in ordering the land returned to acreage and in cancelling or annulling the platting of the lands into lots and blocks is validated and affirmed. (b) The provisions of this section shall not apply to any lands lying within the corporate limits of any town or city, nor shall it affect the title to any lands but shall merely validate the conversion of the lands from lots and blocks into acreage. **History.** Acts 1943, No. 259, §§ 1, 2.

*In Meyers v. Bogner, 2011 Ark. App. 98 (2011), the court affirmed the circuit court ruling that the county court order be set aside for failure to provide notice to the landowners as provided by law.*

*The Court held failure to give notice was fatal to the case and was not afforded to the landowners as per rule 4(f) of the Arkansas Rules of Civil Procedure.*

*In Hummerickhouse v. Johnson, 199 WL 68302 (1999) the Arkansas Court of Appeals affirmed the lower court ruling that the closing of a platted road was not against the public interests. The Court explained that there it is sufficient that the road had not been opened or used as a roadway in 5 years (the failure of the road to be formally accepted was not a requirement of the statute). Neither is there a requirement that the subdivision owners have lake access. Objections by a few lot owners was not sufficient and not determinative as to the best interests of the public, many lot owners signed the petition. An assertion of loss of value was not substantiated by a particular sum in loss of fair market value of the lots and not clearly erroneous. Close of the platted road was not against the best interest of the public.*

*In Perry v. Lee, 71 Ark. App. 47 (2000), the Arkansas Court of Appeals, made clear that a petition to vacate a county road that is platted is governed by Ark Code 14-18-105 through 109, inclusive. A petition to vacate a county road that is not part of a platted subdivision is governed by Ark Code 14-298-103 and 117, and requires the signatures of (10) ten freeholders and the notice requirements. The County Court, Circuit Court, and appeals to the Court of Appeals or Arkansas Supreme Court are without jurisdiction of the case or parties due to the failure to comply with Ark Code 14-298-103 and 117 on vacating the county road (which was not a platted county road).*

*In Anderson v. South Mountain Estates POA, 2018 Ark. App. 530 (2018), all of the property owners of a POA filed a petition to close a road maintained by the POA, that had been almost exclusively used by the subdivision owners, and the court closed the road. The Court Appeals affirmed and concluded that use by the public was absent, that a gate had existed for over (7) seven years, and that to the extent the public had used a few times prior to the (7) seven years meant that they had abandoned any right to use the road. The requirements of Ark Code 14-18-105 through 109 were met.*

*In Weisenbach v. Kirk, 104 Ark. App. 245 (2009), The Arkansas Court of Appeals affirmed the lower court holding that a party that owns lands "abutting" the subject road or subdivision means roads and lands within the subdivision. Appellant was not an abutting landowner within the meaning of the statute. A party that owns lands outside and abutting a segment of a road outside the subject subdivision is not required to be a party or to receive notice. At most such a party may voice their opinion and present evidence just as any member of the public. However, the vacation of a platted subdivision road that has not been constructed or used by the public can be deemed in the best interest to vacate. The statutory scheme is focused on lands and streets located in the platted subdivision and not lands and streets outside the platted subdivision.*

**14-41-302. Authorization.** The owner of any addition or division to any city or incorporated town in this state where no lots or blocks, or any part thereof, have been sold and the streets and alleys have not been used by the public for the last seven (7) years prior to the filing of the petition shall have the right to reduce the addition or division to acreage by petition to the county court where the property is situated.

**History.** Acts of 1929, Act 91, § 1.

**Formerly** Pope's Dig., § 9514; A.S.A. 1947, § 19-407.

**14-41-303. Petition Requirement.** If at any time one (1) person owns, or two (2) or more persons own jointly or as tenants in common, or a corporation owns all the lots and blocks in any addition or division to any city or incorporated town in this state, the streets and alleys of which have not been used by the public for the last seven (7) years prior to the filing of the petition, then the person, persons, or corporation may have the addition or division reduced to acreage by proper petition to the county court. **History.** Acts of 1929, Act 91, § 2.

**14-41-304. Partial owners.** The owners of any part of an addition or division shall have the right to have it reduced to acreage, as in the cases provided in §§ [14-41-302](#) and [14-41-303](#). However, the lots and blocks shall be contiguous. No streets and alleys shall be included in the order reducing the parts of additions or divisions to acreage unless the owners shall have the legal title and be in the actual possession of all the lots and blocks surrounding the streets and alleys.

**History.** Acts of 1929, Act 91, § 3.

**14-41-305. Notice of petition.** This section has been amended by [Act 14 of 2007](#) Upon the filing of a petition, the county court shall immediately cause notice to be published for two (2) consecutive weeks by at least two (2) insertions in some newspaper published in the county having a bona fide circulation therein, stating the substance contained in the petition. (b) The county court shall immediately provide the filed petition to the city clerk of the city or incorporated town in which the property is located. **History.** Acts of 1929, Act 91, § 5; Acts of 2007, Act 14, § 1, eff. July 31, 2007.

**14-41-306. Hearing and order. \*\*Update Notice:** This section has been amended by [Act 14 of 2007](#) (a) The county court shall hear the petition at the first day of the court held after publication of the notice filed under § 14-41-305 if not continued for cause and upon proper showing shall order that the addition or division, or part thereof, be reduced to acreage. (b) If the county court issues an order pursuant to subsection (a) of this section that the addition or division be reduced to acreage, then the addition or division shall thereafter be assessed as acreage for taxation of all kinds. (c) The county court shall immediately provide the filed order to the city clerk of the city or incorporated town in which the property is located.

**History.** Acts of 1929, Act 91, § 6; Acts of 2007, Act 14, § 2, eff. July 31, 2007.

**14-41-307. Appeals.** Any person aggrieved by an order under § [14-41-306](#) may appeal to the circuit court in the manner provided by law for appeals from the county court.

**History.** Acts of 1929, Act 91, § 7.

**VI. PETITION TO ALTER ROAD UNDER ARK CODE § 14-298-124:**

**Ark. Code § 14-298-124. Altering public roads on private land.**

(a) (1) If any person through whose land a public road is or may be established shall be desirous of turning the road through any other part of his or her land, that person shall apply by petition to the county court to permit him or her to turn the road through any other part of his or her land on as good ground and without increasing the distance to the injury of the public. (2) Upon presentation of the petition, the person shall present a supporting affidavit to the effect that the proposed change will not materially increase the distance to the injury of the public, together with opinions by supporting affidavits in writing as to the utility or practicability of the alteration. (b) **The court shall declare the new road a public highway if:** (1) The court finds that the prayer of the petition is reasonable and the alteration will not place the road on worse ground or increase the distance to the injury of the public; (2) The court is satisfied that the new road will be opened by the petitioner a legal width and in all respects made as good as the old road was for the convenience of travelers; and (3) In the opinion of the court, the petition shall be just and reasonable. (c) A person desiring the alteration provided in this section shall pay all the cost incident to the proceedings, and no damages shall be allowed to any petitioner under the provisions of this section by reason of any such change to any petitioner.

**History.** Acts 1871, No. 26, § 57, p. 56; Acts of 1907, Act 427, § 1, p. 1147; Acts [2005, No. 1200](#), § 15. A.S.A. 1947, § 76-916.

**Ark Code § 14-298-102. Notice prerequisite to petition for county road.** (a) Previous to any petition being presented for a county road, **or for the alteration or vacation of a county road, notice** thereof shall be given by publication in some newspaper, published in the county, if one exists. (b) If there is no newspaper published in the county, then notice shall be given by advertisements set up in three (3) public places in each township through or into which any part of the road is designed to be laid out, altered, or vacated, stating the time when the petition is to be presented and the substance thereof. Notice shall be duly authenticated and presented with the petition to the county court.

**History.** Acts 1871, No. 26, § 45, p. 56;

**Ark Code § 14-298-103. Application petitions - Bond Requirement.**

(a) All applications for **laying out, viewing, reviewing, altering, or vacating** any county road shall be by petition to the county court, signed by at least ten (10) freeholders of the county. (b) One (1) or more of the signers to the petition shall enter into

bond, with sufficient security, payable to the State of Arkansas for the use of the county. This bond shall be conditioned that the persons making the application for a view, review, alteration, or vacation of any road shall pay into the treasury of the county the amount of all costs and expenses accruing on the view, review, alteration, or vacation. In case the prayer of the petitioners shall not be granted, or when the proceedings had in pursuance thereof shall not be finally confirmed and established, and, on neglect or refusal of the persons so bound, after a liability shall have accrued, to pay into the treasury, according to the tenor of the bond, all costs and expenses that shall have accrued, the county clerk shall deliver the bond to the prosecuting attorney of the circuit, whose duty it shall be to collect and pay over the bond to the county treasury. (c) In all cases of contest, the court having jurisdiction of the case shall have power to render judgment for costs, according to justice, between the parties.

**History.** Acts of 1871, Act 26, § 43, p. 56.

**Formerly** C. & M. Dig., § 5228; Pope's Dig., § 6943; A.S.A. 1947, § 76-902.

**Ark Code § 14-298-104. Items specified in petition.** All petitions for **laying out, altering, or vacating** any county road shall specify the place of beginning, the intermediate points, if any, and the place of termination of the road.

**History.** Acts 1871, No. 26, § 44, p. 56;

**Formerly** A.S.A. 1947, § 76-903.

### **Arkansas Cases and Attorney General Opinions:**

In *Myers v. Bogner*, 2011 Ark. App. 98 (2011), the court found that holding a hearing 12 days after publishing notice in a local newspaper violates § 14-298-102 because the statute requires strict compliance of publishing notice for two consecutive weeks before having a hearing. The court also found the notice was not met because the notice was published in a newspaper in another county despite there being a circulating newspaper in the county.

In *Wallace v. Desha County*, 351 Ark. 387 (2003) the court explained that the court may vary or change the location and description of the road to be established based to avoid unnecessary inconvenience, unreasonable costs, or "other justifiable reasons". If only part of the road is proper then only that part shall be established. In any event, the description should not be vague.

In *Arkansas Game & Fish Commission v. Lindsey*, 299 Ark. 249 (1989), the court explained that an exception to the prohibition against a suit against the State exists where the act sought to be enjoined is illegal or is causing irreparable injury. It also explains how the road in this case is not a county road because there was no dedication of the right-of-way to the county by the landowners and non-judicial action by someone without statutory or common law authority cannot transfer title to the County. The court established the ways to designate a road to be a county road: (1) Dedication of a land, a right of way or easement to county and acceptance by the county judge in accordance with A.C.A. 27-66-207 and -208; (2) Condemnation by the county judge in accordance with A.C.A. 14-298-101 to -125; or (3) By having the public road designated by the county judge as a mail or bus route to be accepted for maintenance by the county in accordance with A.C.A. 27-66-205 and 206.

**Ark. Op. Att'y Gen. No. 2014-021:** Confirms the *AGFC v. Lindsey* case is the law Arkansas follows. The county judge is the agent designating a county road as such and the county court is the agent accepting a road for "perpetual maintenance" and land in general "for public purposes" because a county judge's acceptance of property is "discretionary," it is unsusceptible of challenge by petition for writ of mandamus under this standard.

**Ark. Op. Att'y Gen. No. 97-181:** The procedures under A.C.A. §§ 14-298-101 to -116 need not be complied with prior to the county judge's exercise of authority under A.C.A. § 27-66-204. The two statutory schemes are independent of each other. The quorum court has some authority to legislate regarding county roads but may not exercise this authority in such a way to deny the county judge or county court its independent constitutional or statutory authority over county roads.

In *McKibbin v. State*, 1883 WL 1172 (Ark. 1883) the court explained that the law makes no exception for those who obstruct a public highway at one point and offer an equally good passage as another.

In *First Pyramid Life Insurance Co. of America v. Reed*, 247 Ark. 1003, 449 S.W.2d 178 (Ark. 1970) the court explained that the county can only acquire jurisdiction of a proceeding under ACA § 14-298-103 when there is strict compliance with the requirements of the Act pertaining to the signing of the petition.

See Also: Arkansas Law Notes, 2008 ARLN 33  
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**VII. PETITION TO OPEN OR CONDEMN PUBLIC ROADS**  
**ARK CODE § 14-298-101, et seq.**

A petition to condemn lands to a county road may be commenced and filed by (5) five or more interested landowners or the county acting *sua sponte*.

**Opening or Altering a Road without Petition:** The county court has power to open new roads and make changes in old roads as it deems necessary and proper, (A.C.A. §14-298-120). When changes are made or a new road opened, the road shall be located on section lines if possible, taking into consideration the conveniences of the public travel, contour of the country, etc. First class roads established or opened may not be less than 50 feet wide. Once the county court decides to open or alter a road, the appropriate order shall be made and entered in the record.

**Ark Code § 14-298-101. Powers of county court.** All public roads and highways shall be laid out, opened, and repaired agreeably to the provisions of this chapter. The county court of each county in this state shall have full power and authority to make and enforce all orders necessary as well for establishing and opening new roads as for changing and vacating any public road or part thereof. **History.** Acts 1871, No. 26, § 2, p. 56; C. & M. Dig., §5226; Pope's Dig., § 6941. A.S.A. 1947, § 76-901.

**Ark Code § 27-67-212.** Provides for the ASHC to "call upon" the county court to condemn land for the construction of a state highway. **Ark Code § 27-67-320** provides that in the event the county refuses, one half of the costs of procuring the right of way shall be deducted from the State Highway Fund or the state revenue from the motor fuels and special licenses fees. In *ASHC v. Dotson*, 781 S.W.2d 459 (Ark. 1989) the court held that under **Ark Code § 14-298-120** five (5) or more interested landowners may petition the county to open a road as a public road or the court may on its own motion, *sua sponte*. However, **Ark Code § 14-298-120** does not give the ASHC the right to petition the county court. In these actions, the county is the condemning party and the ASHC is not a party. This is despite the fact that the ASHC drafted the petition and the order. The petition in *Dotson* was defective and no lawful petition was filed, because it misled the Dotsons into believing the ASHC was the petitioner. See also: *ASHC v. Croom*, 280 S.W.2d 887 (Ark. 1955).

**27-67-212. Changing or widening roads – Role of county court.** (a) The State Highway Commission may call upon the county court to change or widen, in the manner provided by § [14-298-121](#), any state highway in the county where the state highway engineer deems it necessary for the purpose of constructing, improving, or maintaining the road. (b) In the event the county court should refuse to widen the road as requested, the commission may refuse to construct, improve, or maintain that portion of the road until a suitable right-of-way is provided. (c) This section and § [14-298-120](#) shall be cumulative to all existing laws and parts of laws and shall not be construed as to repeal any existing laws or part of laws unless they are in conflict herewith, and then only to the extent of the conflict. **History.** Acts 1965, No. 387, §§ 3, 4. A.S.A. 1947, §§ 76-928, 76-928n.

Historically, the notice to landowners of orders condemning their lands was lacking. The General Assembly cured the defects in notice under **Ark Code § 14-298-122** which provides: **Notice by actions.** (a) The purpose of this section is to establish a rule defining what actions have supplied the requisite notice to affected landowners of the condemnation of their property by county court orders effected pursuant to § [14-298-121](#). (b) Entry and notice shall mean: (1) Any construction work performed on a road, street, or highway where the right-of-way thereof condemned by the county court is on a new location was entry and was notice of the existence of the condemnation order, from the date of performance of the work, to the person owning, prior to the court order, the property entered upon; (2) Where the right-of-way condemned by a county court order included an existing road, street, or highway, construction work on the right-of-way which was more than the mere resurfacing or reconditioning of the existing road, street, or highway, was entry and was notice of the existence of the condemnation order to the person owning, prior to the court order, the property entered upon. **History.** Acts 1963, No. 185, §§ 1, 2. See: *ASHC v. Triplet*, 389 S.W.2d 439 (Ark. 1965).

In *Oliver v. Washington County*, 328 Ark. 61 (1997) the appellants alleged that the appeal-bond requirement violated their constitutional rights to due process, that the County failed to follow the condemnation procedures contained in Ark. Code Ann. §§ 14-298-101 to 116 (1987), and that the condemnation procedures in Ark. Code Ann. §§ 14-298-101 to 116 (1987) violate the separation-of-powers doctrine. The appellants' complaint, however, is not included in the abstract. The appellants' also contended at a later hearing that the condemnation procedures set forth in Ark. Code Ann. §§ 14-298-120 to 121 (1987) violate the separation-of-powers doctrine. The trial court found that

the County Court condemned the property pursuant to the procedures mandated by Ark. Code Ann. §§ 14-298-120 to 122, and thus the court declined to address the Oliver's arguments regarding sections 14-298-101 to 116. Moreover, the trial court ruled that the appellants failed to demonstrate how the county judge's dual roles caused him to be unduly influenced in the condemnation proceeding. Finally, the trial court acknowledged that the appellants failed to notify the Attorney General's Office, as required by Ark. Code Ann. § 16-111-106(b) (Repl. 1994), of their constitutional challenge to sections 120 to 122. For these reasons, the court denied the appellants' motion for summary judgment. Appellants failed to properly abstract the record for appeal, so the Supreme Court declined to address those matters on appeal. The county used entry as notice of the widening and the court order under the law as it existed in 1997.

**14-298-119. Limitation on damages for land taken.** No part of this chapter shall be so construed as to entitle any person whose lands, or any part thereof, may be appropriated under this chapter to a public highway to any further compensation and damages than the value of property appropriated and damages sustained by the owner thereof by reason of a road being established on and over the property, over and above such value. **History.** Acts 1871, No. 26, § 71, p. 56; C. & M. Dig., § 5244; Pope's Dig., § 6959. A.S.A. 1947, § 76-923. {Note: perhaps, there are benefits to the lands}

**14-298-120. Opening, changing, and classifying roads by order of county court.** (a)(1) The county courts shall have power to: (A) Open new roads;(B) Make changes in old roads, as they deem necessary and proper; and (C) Classify the roads and bridges in their respective counties for the purposes of this section and § [27-67-212](#). (2)(A) When the change shall be made or any new road opened, the road shall be located on section lines as nearly as may be, taking into consideration the conveniences of the public travel, contour of the country, etc. (B) Roads hereafter established or opened as public roads shall not be less than fifty feet (50') wide, providing a minimum of twenty-five feet (25') of right of way on either side of the center line. (3) An appropriate order of the county court shall be made and entered of record therefor. (b)(1) Any five (5) or more interested landowners may petition the county court for the opening of any road as a public road. (2) The petition shall give the starting point and terminus of the road, as well as intermediate points, and such other description or plat as will permit the location of the road by the county surveyor. (c)(1)(A) The petition shall be accompanied by

a bond signed by at least one (1) of the petitioners and by other good and sufficient sureties. (B) The bond shall provide for reimbursing the county for any claims that may be sustained against the county for lands taken by opening of the road. (2) The petitioners shall cause notice to be served upon the landowners as provided by the Arkansas Rules of Civil Procedure. (d)(1) On filing the petition, the county court shall set a date for the hearing. (2) If service is not obtained, then by one (1) insertion for two (2) weeks at least thirty (30) days before the hearing in some newspaper having a general circulation in the county, the county clerk shall publish a notice as to the filing of the petition, naming the day on which the county court will hear the parties and those for and those against the opening of the road. (e) On the day named, the county court shall hear those for and against the opening of the petitioned road and shall grant or deny the prayer of the petitioners as may be deemed wise and expedient by the court and shall make and cause to be entered an appropriate court order either laying out or changing the road or denying the petition. (f) Upon the entry of the foregoing order of the county court, the clerk of the court within ten (10) days shall cause a copy of the order to be served upon each of the owners of record of any lands affected by the order. The service shall be in the form and manner provided by law for service in civil actions. (g) Upon return to be made by the sheriff showing service of the order upon any landowner, the clerk shall note in the records of the county court the record of the service, showing the date thereof and the person served, which shall be and become a part of the permanent records of the court. (h) Upon the entry of the order by the county court, the records shall constitute valid constructive notice to all subsequent purchasers of the lands and all other persons acquiring or holding the lands by or through the landowners affected. (i) If the owner of the land over which any road shall hereafter be so laid out by the court shall refuse to give a right of way therefor, then the owner shall have the right to present his or her verified claim to the county court for damages the owner may claim by reason of the road's being laid out on his or her land. (j) If the owner is not satisfied with the amount allowed by the court, he or she shall have the right to appeal, as now provided by law from judgments of the county court. (k) However, no claim shall be presented for such damages after twelve (12) months from the date of the service of the order as provided in this section. When the order is made and entered of record laying out or changing any road, the county court or judge thereof shall have the right to enter upon the lands of the owner and proceed with the construction of the road. All damages allowed under this section shall be paid out of any funds appropriated for roads and bridges, and if no funds are so appropriated, then

damages shall be paid out of the general revenue fund of the county. (1) This section and § [27-67-212](#) shall be cumulative to all existing laws and parts of laws, and shall not be construed as to repeal any existing laws or parts of laws, unless they are in conflict herewith, and then only to the extent of the conflict. **History.** Acts 1965, No. 387, §§ 1, 2, 4; Acts [2005, No. 1200](#), § 12.A.S.A. 1947, §§ 76-926.

### **Arkansas Cases and Attorney General Opinions:**

In *Burley v. Bradley*, 2021 Ark. App. 105 (2021), the court held a county road may be created in one of three ways: (1) a voluntary dedication by the landowner and acceptance by the county; (2) county condemnation; or (3) the county judge may enter an order declaring a mail route or a school-bus route a county road.

In *Hempstead County v. Huddleston*, 182 Ark. 276, 31 S.W.2d 300 (1930) the plaintiff sought damages based on the county court's decision to lay a new highway through his land which changed the location of the old road, which ran near his residence, to a different location further away from it. The court held that the relocation of the road could not be considered as a factor for damages because "no person has a vested right in the maintenance of a public highway in any particular place." The state or a county judge may relocate a road at any time if it is in the public's interest. See also *Arkansas State Highway Commission v. Bingham* 231 Ark. 934 (1960) holding the right of ingress and egress is a property right which is compensable. However, where this right is not completely destroyed but diverted in a way which might make access more difficult, landowners may not be compensated for mere inconvenience, including diverted traffic flow from a commercial business.

In *Tuggle v. Tribble*, 177 Ark. 296, 6 S.W.2d 312,314 (1928), the plaintiff lived on a designated public road. When the county court ordered a relocation (56) fifty-six feet from his residence, he sought to enjoin the county based on the argument that he relied on the location of the road always being public when he bought the property. This argument was unsuccessful because the court reasoned that if this were true, there could never be any changes to public roads. The court recognized that any change in a public road is sure to cause some private inconvenience because people are accustomed to the location of roads, but found mere inconvenience to hold no weight compared to the discretion of the county court to relocate roads in the best public interest.

*Mohr v. Mayberry*, 192 Ark. 324, 90 S.W.2d 963 (1936), is an example of the court's consideration of the level of inconvenience a landowner may suffer as a result of the unique character of his or her land or its particular use. In this case, the Supreme Court of Arkansas, vacated an order establishing a new road because the private road would split appellant's farm in half, causing him to have to maintain his fences and divert his cattle across the road to reach water, effectively destroying any convenient use of his farm. In this case, the creation of a private road along that route would burden the landowner far more than it would benefit the appellant.

Question: Has the road been vacated or merely changed?

In *Reding v. Wagner*, 350 Ark. 322 (2002), the court held a county judge does have the authority to alter the course of a county road. Section 3 of Amendment 55 to the Arkansas Constitution vests executive power in county judges to make discretionary decisions regarding the operation of the system of county roads, including the power to make changes in old roads, open new roads, and classify roads and bridges as the county judge deems necessary and proper. Ark.Code Ann. § 14-298-117, on the other hand, is merely a process by which citizens may petition the county judge to vacate a county road, which the court made clear is distinct from changing or altering an existing road. The provision in section 14-298-117 in no way conflicts with county judges' authority to make changes to county roads as outlined in Ark.Code Ann. § 14-298-120.

**Ark. Op. Att'y Gen. No. 97-181**: references Section 3 of Amendment 55 to the Arkansas Constitution, which empowers county judges to "operate the system of county roads" in an "executive capacity" and not by order of the county court. This amendment grants county judges broad discretion in engaging in administrative actions pertaining to the "operation" of the system of county roads, which does not need to be exercised through the county court. See, e.g., *Prewitt v. Warfield*, County Judge, 203 Ark. 137, 156 S.W.2d 238 (1941) (county court has authority to lay out county road under A.C.A. § 14-298-121. See also Op. Att'y Gen. 92-081 (concluding that the county judge has authority to accept private roads into the county road system, at least under A.C.A. §§ 27-66-204, -205, -206, -207 and -208, without the approval of the quorum court).

Furthermore, the procedures set out in A.C.A §§ 14-298-101 to -116, which prescribe a procedure for petitioning for the opening, altering or vacation of a county road, need not be complied with prior to the county judge's exercise of authority when creating new roads. See also Ark. Op. Att'y Gen. No. 92-081.

**A.C.A. §14-298-122**  
**Entry and Notice**

The right of condemnation by county court order granted in subsection 121 above in 1899, was found to have constitutional infirmities due to inability to prove notice of right of way based upon county court orders. The courts established by long-standing precedence definitions of entry and notice. In 1963, the Legislature adopted this body of long-standing court precedence and provided an additional and modest dose of certainty to right of way founded upon court orders by virtue of A.C.A. §14-298-122 which provides that entry and adequate notice shall mean: road work within court order on new location or road work within court order beyond resurfacing existing roadway. The Supreme Court of Arkansas has embraced this cure to defects in county court order right of way, *A.S.H.C. v. Cordes Motors*, 315 Ark. 285, 867 S.W. 2d 178 (1993). However, the condemner has the burden of proof to prove notice. *A.S.H.C. v. Montgomery*, 237 Ark. 857, 376 S.W. 2d 662 (1964). Notice given shall be considered notice to all subsequent landowners. *A.S.H.C. v. Jerry*, 241 Ark. 591, 408 S.W. 864 (1966). Entry that is a physical and visible invasion of property alerts a landowner that the government is exercising dominion over his or her property. See: *A.S.H.C. v. French*, 246 Ark. 665, 439 S.W. 2d 276 (1969); and *A.S.H.C. v. Holden*, 217 Ark. 466, 231 S.W. 2d 113 (1950).

**14-298-122. Opening or altering roads in counties voting for road tax — Notice by actions.** (a) The purpose of this section is to establish a rule defining what actions have supplied the requisite notice to affected landowners of the condemnation of their property by county court orders effected pursuant to § [14-298-121](#). (b) Entry and notice shall mean:

(1) Any construction work performed on a road, street, or highway where the right-of-way thereof condemned by the county court is on a new location was entry and was notice of the existence of the condemnation order, from the date of performance of the work, to the person owning, prior to the court order, the property entered upon; (2) Where the right-of-way condemned by a county court order included an existing road, street, or highway, construction work

on the right-of-way which was more than the mere resurfacing or reconditioning of the existing road, street, or highway, was entry and was notice of the existence of the condemnation order to the person owning, prior to the court order, the property entered upon. **History.** Acts 1963, No. 185, §§ 1, 2.

**PROCEDURE IN INSTANCES WHERE VIEWERS ARE APPOINTED FOR  
CONDEMNATION PROCEEDINGS**

**Opening a Road  
A.C.A. §14-298-120**

- 5 or more interested landowners may file petition.
- Petition must give starting point and termination of the road, as well as intermediate points and any other descriptions.
- Petition accompanied by a bond to cover expenses.
- County court shall set a date for the hearing not more than 30 days from the filing of the petition.
- County clerk shall publish the filing of the petition and the hearing date once in a newspaper having circulation in the county at least 10 days before the hearing date.
- On the hearing date, the court shall hear from those for and against the opening of the road and shall grant or deny the request and enter a court order.
- Within 10 days after entry of the order, the clerk of the court shall have a copy of the order served (as provided for in civil actions) on all owners of record of any lands affected by the order.
- Upon return of service by the sheriff, the clerk shall note in the records of the county court the dates of service.
- Upon entry of the order, the records shall constitute valid constructive notice to all subsequent purchasers of the lands and all other persons acquiring or holding the lands by or through the landowners affected.
- If the owner of any land refuses to give a right-of-way, then the owner has the right to present verified claims to the county court for damages from the road being laid out on his land.
- The owner may appeal the decision.
- No claim shall be presented 12 months after the date of service of the order. Claim shall be paid from monies appropriated and then from general revenue.

**Arkansas Cases:**



In *ASHC v. Dotson*, 301 Ark. 54 (1989), the court found that the petition naming ASHC as a party was incorrect in doing so because §14-298-120 does not give the ASHC the right to petition the county court. In these actions, the county is the condemning party and the ASHC is not a party. Therefore, when ASHC moved to dismiss the case, it should have been granted since they were wrongly named in this suit. In these types of proceedings, the county court must be named as a party.

In *Carter v. Bates*, 142 Ark. 417 (1920), the Supreme Court of Arkansas set aside an order establishing a new road because it extended over valuable lands which would be injured by the proposed road and because an alternate road could have been established on the petitioner's own land which was longer and more expensive but not prohibitive.

#### Viewers duties and responsibilities:

- Be a jury to assess and determine the compensation to be paid in money for the property sought to be appropriated; and to
- Assess and determine damages each owner of the lands over which the road is to run shall suffer by the opening and construction of the road. (A.C.A. §14-298-105)
- Meet at time & place specified in order, but no later than 5 days after
- Take oath or affirmation to faithfully and impartially discharge the duties
- Take 2 people to serve as chain carriers and 1 person as a marker. (A.C.A. §14-298-109)

Viewers must give their opinion as to if a good road can be made with reasonable expense, taking into consideration the ground, convenience, inconvenience and expense, which will result to individuals as well as to the public if the road is established or altered as requested. (A.C.A. §14-298-109)

When laying out, altering or establishing public highways, the highways must be located as near as practicable on section and subdivision lines. (A.C.A. §14-298-109). Viewers also need to report what width the road should be to promote public convenience, but this decision ultimately rests with the county court. (A.C.A. §14-298-110).

#### **Report of Viewers**

The viewers must make and sign a report in writing stating:

- Their opinion for or against the establishment, alteration or vacation of the road along with their reasons;
- The commencement and termination, courses, and distances

of the road, so that the road can be readily formed and located;

- The value of the property;
- The amount of damages, if any, and to whom, which by them have been assessed and which would accrue by the establishing and opening of the road. (A.C.A. §27-298-112)

After Report is Received

The county court must read the report publicly during session. If the court is satisfied with the report and there are no objections, the court can order that damages be paid and the road declared public. If the court does not think the road is worth paying the damages or petitioners do not want to pay the damages or if the viewers recommend against the petition, the court can order that the petition not be granted. (A.C.A. §14-298-113).

**14-298-105. Appointment of viewers – Duties.** (a) On presentation of the petition and proof of notice of publication as set out in § [14-298-102](#) and if the county court is satisfied that proper notice has been given in accordance with the provisions of this chapter, the court shall appoint three (3) disinterested citizens of the county as viewers, who shall also: (1) Be a jury to assess and determine the compensation to be paid in money for the property sought to be appropriated, without deduction for benefits to any property of the owners; and(2) Assess and determine what damages each owner of the lands over which the road is to run shall suffer by the opening and construction of the road. (b) The county court shall issue its order directing the viewers to proceed on a day to be named in the order to view, survey, and lay out or alter the road and also determine whether the public convenience requires that the road, or any part thereof, shall be established. **History.** Acts 1871, No. 26, §§ 46, 48, p. 56;; Pope's Dig., §§ 6946, 6948; Acts [2005, No. 1200](#), § 1. A.S.A. 1947, §§ 76-905, 76-907.

**14-298-106. Surveyors.** (a) The viewers may call to their assistance a competent surveyor to assist them in laying out and surveying or altering any road they may be ordered by the county court to view, survey, and lay out or alter. (b) It shall be the duty of every surveyor, when called on by any viewer or reviewers, to survey any road they may be required to view or review, lay out, establish, or alter and to furnish all courses, bearings, distances, plats, and surveys of roads required by them to be laid out, established, or altered, as viewers or reviewers, when demanded by them. **History.** Acts 1871, No. 26, §§ 47, 63, p. 56; A.S.A. 1947, §§ 76-906, 76-920.

**14-298-108. Notices to landowners and viewers.** (a) It shall be the duty of one (1) of the petitioners to give at least thirty (30) days' notice in writing to:(1) The owner or his or her agents, if residing within the county, or if the owner is an incapacitated

person as defined by § 28-65-104, then to the guardian of that person, if a resident of the county, through whose land the road is proposed to be laid out and established; and(2) The viewers named in the order of the county court of the time and place of meeting as specified in the order.(b) (1) (A) It is further made the duty of the principal petitioner, if the road is proposed to be laid out on or through any land owned by nonresidents of the county, to cause notice to the nonresidents of the county to be served as provided by the Arkansas Rules of Civil Procedure, and if service is not obtained, then the notice shall be published one (1) time per week for two (2) consecutive weeks in some newspaper of general circulation published in the county.(B) If there is no newspaper published in the county, then notice shall be given to the nonresident by posting a notice of the time and place of meeting of the viewers as specified in the order of the county court.(2) The substance of the petition for the road shall also be posted upon the door of the office of the clerk of the county court for at least two (2) weeks before the time fixed for the meeting of the viewers. **History.** Acts 1871, No. 26, § 49, p. 56; 9; Acts 2005, No. 1200, § 3.A.S.A. 1947, § 76-908.

**14-298-109. Viewing, surveying, and laying out road.** It shall be the duty of the viewers to meet at the time and place specified in the order. After taking an oath or affirmation to faithfully and impartially discharge the duties of their appointments, respectively, they shall take to their assistance two (2) suitable persons as chain carriers and one (1) person as marker and proceed to view, survey, and lay out or alter the roads as prayed for in the petition, or as near the same as in their opinion a good road can be made with reasonable expense, taking into consideration the ground, convenience, and inconvenience and expense which will result to individuals as well as to the public if the road is established, or any part thereof, or altered as prayed for. In laying out or altering or establishing public highways, the highways shall be located as near as practicable on section and subdivision lines. **History.** Acts of 1871, No. 26 §50, p. 56; Acts of 1899 No. 202 §4; C. &M. Dig., §5235; Pope's Dig., §6950; A.S.A 1947, §76-909.

**14-298-110. Determination of road width.** (a) (1) The viewers shall report what width the road should be to promote public convenience. (2) However, the county courts shall have power to determine what shall be the width of each road in their respective counties. (b) The presumed width of a public road shall be fifty feet (50'), providing a minimum of twenty-five feet (25') of right-of-way on

either side of the center line. **History.** Acts 1871, No. 26, § 48, p. 56; C. & M. Dig., § 5233; Pope's Dig., § 6948; Acts [2005, No. 1200](#), § 5. A.S.A. 1947, § 76-907.

**14-298-111. Assessment of damages.** The viewers shall assess and determine the damages sustained by any person through whose premises the road is proposed to be established, mentioning the damages to each tract separately. **History.** Acts 1871, No. 26, § 51, p. 56; C. & M. Dig., § 5236; Pope's Dig., § 6951. A.S.A. 1947, § 76-910.

**14-298-112. Report of viewers – Contents.** Viewers shall make and sign a report in writing, stating: (1) Their opinion in favor of or against the establishment, alteration, or vacation of a road, or any part thereof, and set forth the reason for their opinion; (2) The commencement and termination, courses, and distances of the road, so that the road can be readily formed and located; (3) The value of the property sought to be appropriated for the establishment of the road; and (4) The amount of damages, if any, and to whom, which by them have been assessed and which would accrue by the establishing and opening of the road. **History.** Acts 1871, No. 26, § 52, p. 56; C. & M. Dig., § 5237; Pope's Dig., § 6952. A.S.A. 1947, § 76-911.

**14-298-113. Proceedings on report – Compensation and damages.** (a) The county court, on receiving the reports of the viewers as set out in § [14-298-112](#), shall cause the report to be available to all parties and shall cause a hearing to be held in which the report is read publicly. (b) If no legal objection is made to the reports by the parties and the court is satisfied that the road, or any part thereof, will be of sufficient importance to the public to cause the damages and the compensation that have been assessed as set out in § [14-298-111](#) to be paid by the county, and that the amount so assessed is reasonable and just, and the report of the viewers being favorable thereto, the court shall order the damages to be paid to the persons entitled thereto from the county treasury, and thenceforth the road shall be considered a public road. (c) If the court is of the opinion that the road is not of sufficient public utility for the county to pay the compensation and damages assessed as set out in § [14-298-111](#) and the petitioners refuse to pay the compensation and damages, then the road shall not be declared a public highway or road and the costs accruing by reason of the application shall be paid by the petitioners, as provided in § [14-298-103](#). If the report of the viewers is against the proposed road or alteration, or if the road is not of

sufficient public utility, in the opinion of the court, then no further proceedings shall be had thereon and the obligors in the bond securing costs and expenses shall be liable for the full amount of the costs and expenses. **History.** Acts 1871, No. 26, § 53; C. & M. Dig., § 5238; Pope's Dig., § 6953; Acts 2005, No. 1200, § 6. A.S.A. 1947, § 76-912.

**Review:** After the viewers have returned their opinion in favor of the road, but before a road is established, any citizen of the county whose lands are affected by the road may apply to the county court by petition for a review of the road. It is within the discretion of the county court to grant a review. If the court grants a review, it shall appoint 3 different disinterested freeholders of the county to review and report their findings. If reviewers are in favor of the road, it shall be established. If reviewers are not in favor of the road, it shall not be established. (A.C.A. §14-298-115)

**Appeal:** Any party not satisfied with the decision of the county court may appeal the decision to the circuit court within 10 days of the decision. (A.C.A. §14-298-116). Below, is the law and procedure regarding the appointment of viewers not herein and above, including, 14-298-105, 106, 109, 110, 113, 114 and 115 etc.

**14-298-114. Order opening road.** After any road has been established and declared a public road, the county court shall issue an order declaring the road to be opened and the order shall be filed of record with the county clerk. **History.** Acts 1871, No. 26, § 54, p. 56; C. & M. Dig., § 5239; Pope's Dig., § 6954; Acts 2005, No. 1200, § 7. A.S.A. 1947, § 76-913.

**14-298-115. Review.** (a) After the viewers of any county road shall have made return in favor of the road and before the road has been established, any citizen of the county whose lands are affected by the road may apply by petition to the county court for a review of the road, as provided in § 14-298-103. (b) The court, on being satisfied from the petition that a review should be granted, shall appoint three (3) disinterested freeholders of the county to review the road and issue their order to the reviewers directing them to meet at a time and place therein specified. After taking the oath required of viewers, they shall proceed to examine the route surveyed for the road by the former viewers and make a report in writing to the court stating their opinion in favor of or against the establishment of the road, or any part thereof, and their reasons therefor. (c) The petitioners for review shall give at least thirty (30) days' notice to the principal petitioner for the road of the time and place of meeting of the reviewers. (d) If a

review is granted, then no further proceedings shall be had until the reviewers have reported their action to the court. (e)(1) If the report of the reviewers is in favor of the road, the road shall be established, recorded, and opened, and the persons bound for the review shall pay into the county treasury the amount of the costs of the review. (2) If the report is against the establishment of the road, no further proceedings shall be had about the road before the court, and the persons executing the first bond shall pay into the county treasury the costs and expenses of the views, survey, and review of the road. **History.** Acts 1871, No. 26, § 55, p. 56; C. & M. Dig., § 5240; Pope's Dig., § 6955; Acts 2005, No. 1200, § 8. A.S.A. 1947, § 76-914.

In *Independence County v. Sowell*, 104 Ark. 371 (1912) the court explains the county court will appoint viewers to assess the damages, and the county clerk will order the damages to be paid. The county court will only have the authority to pass upon the reasonableness of the amount of damages assessed.

In *Beck v. Biggers*, 66 Ark. 292 (1899) the court explains that not being properly notified of an assessment, as a viewer, is immaterial if you are notified the day of the meeting and appear. A disinterested viewer cannot be one that is familial related to the landowner. The court also explains how the viewers' report is insufficient to meet the requirements of the statute when it is so indefinite that a stranger, even with a compass and chain, could with difficulty, if at all, determine the true location.

In *Nevius v. Reed*, 176 Ark. 903 (1928) the court explained that because the plaintiff did not have notice of the meeting of the viewers and took no part in the proceedings to lay the road over his land, the county court could not approve of the viewer's actions of laying road over Nevius's land without his consent.

In *Lonoke County v. Lee*, 98 Ark. 345(1911) and *Polk v. Road Improvement District No. 2 of Lincoln County*, 185 S.W. 453 (Ark. 1916), both courts explain that although there was no notice of the meeting of the viewers for the assessment of damages, this will not void the judgment and does not affect jurisdiction of the court.

In *Nemeier v. Bramlett*, 103 Ark. 209 (1912) the court ruled that the viewers' assessment of damages is reviewable and not binding until the judgment of the county court is entered.

In *St. Louis Southwestern Ry. Co. v. Royall*, 75 Ark. 530 (1905) the court explained that the viewers erred in not assessing the

railroad company's Damages they would suffer by a county road crossing their tracks. Viewers must assess whether there is damage and the amount of such damage.

Question: Can enhancement be equated with just compensation?

The Supreme Court of Arkansas has repeatedly held enhancement may be equated with just compensation where a portion of the person's land taken for public use enhances the value of the rest of his or her land so as to make it of greater value than the whole before the taking. In this case, the landowner has received just compensation in the form of benefits. See *Cullum v. Van Buren County*, 223 Ark. 525. However, in *Cate v. Crawford County*, 176 Ark. 873, and *McMahan v. Carroll County*, 283 Ark. 812, the court clarified that such benefits must be special to the owner's land and must be "local" and "peculiar" in nature. See also *Lazenby v. Arkansas State Highway Commission*, 231 Ark. 601.

In *Howard v. State*, 47 Ark. 431, (1886) the court held "The landowner cannot be said to be deprived of his rights to be heard by the want of notice of the viewers' meeting. The assessment of damages by the viewers is not of itself binding upon him. It requires the judgment of the county court to give it any force or validity. It is made the duty of the court to see that the award of damages is just to the public and the individual, and the landowner, who is a party by virtue of the publication, is thus afforded his day in court, regardless of the report of the viewers." The county court's jurisdiction is not dependent on sufficient notice to the landowner. See also *Lonoke County v. Lee* 98 Ark. 345 (1911) holding notice by publication is sufficient; the plaintiff's due process was not violated when the viewers met one day before the scheduled meeting without notice to plaintiff. But see *Beck v. Biggers*, 66 Ark. 292, 50 S.W. 514; *Nevius v. Reed*, 176 Ark. 903 (1928) holding where landowners receive no notice of the meeting of the viewers, the county court's jurisdiction is nullified. Failure to give notice constitutes error and a reversal of the county court's decision to establish a new road.

In *Castleman v. Dumas*, 279 Ark. 463 (1983), the court awarded the appellant costs to her appeal even though they ruled in favor of the appellee because it would be most unfair to take one's land and require her to pay the costs of that proceeding.

In *Brown v. Henderson*, 66 Ark. 302 (1899), after Brown asked the county court to order the construction of a ditch, the court followed the procedures for appointing viewers, who returned a

decision in favor of construction of said ditch. However, upon complaint by another citizen, the court followed the procedure for appointing reviewers, who concluded the ditch would not be of public benefit and utility and decided against its construction. Despite Brown's appeal of this decision, the Supreme Court of Arkansas ultimately upheld the decision of the reviewers. When a report by reviewers has been made, the county court must enforce the reviewers' decision and if the reviewers decide against construction, tax the costs of desired construction against the petitioner (the construction of the ditch in this case). See also *Cribbs v. Benedict*, 64 Ark. 555 (1897), holding that construction of a ditch approved by the viewers "must substantially come within the general description of the route required by the act to be set forth in the petition" and may not substantially deviate from what the viewers' report.

See *Pippin v. May*, 78 Ark. 18 (1906), "In determining whether such a road is necessary, the court must, of course, take into consideration, not only the convenience and benefit it will be to the limited number of people it serves, but the injury and inconvenience it will occasion the defendant through whose place it is proposed to extend it. After considering all these matters, it is for the court to determine whether the road is, within the meaning of the law, necessary or not." The test is not absolutely necessity, or that petitioner has no other means of access to a public highway, but rather that the existing road is at times difficult to travel and expensive to maintain and that the new road is better located and may be established without significant injury to the other person.

Furthermore, in *Burton v. Hankins*, 98 Ark. App. 51 (2007) the Court of Appeals of Arkansas rejected appellants' petition for a road of necessity across their property because they did not follow the statutory scheme laid out in Ark. Code Ann. §§ 27-66-401 to 402 to establish one. The statutes allow viewers to consider not only the route proposed by the landowner but also any other route the viewers may deem proper. However, in order for viewers to consider alternate routes across neighboring property owners' land, the owners must have notice or be made parties to the actions at hand. Because the appellant's proposed road was rejected by the viewers and appellants did not give notice to any other surrounding landowners, alternative routes could not be considered and their petition was ultimately rejected. Consequently, the court could not open a road across the land of the nonparties without notice, even if it was the best route to grant appellants access.



In *Nation v. Ayres*, 340 Ark. 270(2000), the Supreme Court of Arkansas upheld the decision to locate a county road based on the recommendation of the viewers. In its reasoning, the circuit court gave more weight to the viewers' opinion than a private contractor's opinion about the placement of a road after the plaintiff challenged the viewers' decision.

Best Practices: In cases where there are viewers the manner in which to conduct the evidentiary hearing you might consider the following as a possible best practice.

**EVIDENTIARY HEARING (with Viewers):**

STEP 1: The Court should swear in all of the witnesses:

"Do you solemnly swear or affirm to tell the truth, the whole truth and nothing but the truth"?

STEP 2: The procedure for an evidentiary hearing can vary. Again, the goal is to provide due process, a meaningful hearing and a presentation of substantial evidence from which the court can make and support its ultimate ruling.

**One manner** is as follows: the court may desire to commence the presentation of evidence by the court directing a viewer to testify (under oath on his opinion-also representing the majority opinion) and present the majority report. This may lend some order to the proceedings. The court can simply ask the viewer to testify: as to the various work done by the viewers, the observations of the viewers, describe the characteristics of the subject lands, submit photographs, maps and plats, and to **cover of the opinions of the majority of the viewers and the basis or evidence that supports those opinions.** {This is somewhat based up the viewer acting as an objective officer of the court and an objective witness. This may enhance order to the proceedings, demonstrate the control of the court over the proceedings and get to the heart of the matter. As noted above and in Ark Code § 14-298-109, 110, 111, 112, and 113: the substance of the viewers' opinions are within their **DIRECTIONS.** They are directed to determine and their report should reflect: "**the ground, the convenience, inconvenience and expense**" to the individual landowners and the public from the establishment of the public road as prayed for or as altered. Whether the road should come into existence, the **width, location** of the road are all to be determined by the court and should be included in the viewers' reports and testimony. Likewise, the determination of the **damages** and the **responsible party** for payment of the **sum of just compensation**, i.e., the petitioners or the county should be

in the report and the testimony. Again, the evidence presented should cover these matters; and the **report of the viewers** may be offered (and if without objection—marked and received into evidence). Note: in any event **the report of the viewers shall be filed with the county clerk {14-298-114}**. {Also, the viewer(s) should also testify and submit their **invoice** for services rendered, perhaps as a part of the report, including provision for time and travel to and from the courthouse for the hearings, etc.}

STEP 3: In any event, the court should allow the respective parties (and the court) to cross-examine the viewers and witnesses for the county. The landowners and then Petitioner shall be given opportunity to ask questions or cross-examine the viewers.

Step 4: The landowner should be allowed to call witnesses, and county cross-examine;

STEP 5: **APPEAL:** Again, an aggrieved landowner or party has the right to appeal a final order from county court to circuit court. The appeal period is generally (30) thirty days from entry. See: 14-298-116; 14-298-122 which cures defects in actual notice by constructive notice of a duly filed order. Finally, see also: The Rules 1 & 9 of the "District Court Rules" (formerly "Inferior Court Rules" generally provide for (30) thirty days from entry of a final order. The appeal to circuit court is an appeal *de novo* which means: "Anew; fresh; a second time". See: *McGhee v. Glenn, County Judge*, 428 S.W.2d 258 (Ark. 1968); and *Oliver v. Washington County*, 940 S.W.2d 884 (Ark. 1997). A trial *de novo* is trying a matter a second time as if it had not been heard before.

**FUNDAMENTAL JUDICIAL PROCESS (STATE LAW-ASHC one best practice):**  
**(distinct from relocation or federal acquisition procedures):**

NOTICE TO LANDOWNER: Notice to landowner under Arkansas Rules of Civil Procedure, Rule 4, by summons is necessarily sufficient. Also, notice may be evidenced by signing petition under pure donation or signing petition with acceptance of just compensation; serve with copy of the order; appearance at hearing made of record; publication *may* constitute notice as per statute; serve with copy of order and notice of hearing; entry during the construction of the road on new location or widening may constitute notice of court order filed with county clerk.

PROPER PETITION: Petition signed by (5) five or more interested landowners; The petition shall give the starting point and terminus of the road, as well as intermediate points, and such other description or plat as will permit the location of the road by the

county surveyor; and width of no less than fifty feet (sixty feet for state aid). If petitioners seek a road, no county must post sufficient bond to provide for reimbursing the county for claims for lands taken.

**HEARING (on whether to grant the petition):** The court shall hear those for or against the petition and either grant or deny the petition (this may technically not transpire in acquisition by county on behalf of the ASHC).

**ORDER:** If court grants the petition, the court may enter an Order laying out or widening or changing the road. The Order shall generally provide the point of beginning and terminus (centerline or legal description); and width of no less than fifty feet (sixty feet for state aid). The location shall be located at or near section lines, taking into account the conveniences of the traveling public and contour of the country, etc. The court order must be filed of record with the county clerk under 14-298-114.

**ACTION BY THE COUNTY CLERK:** (f) Upon the entry of the foregoing order of the county court, the clerk of the court within ten (10) days shall cause a copy of the order to be served upon each of the owners of record of any lands affected by the order. The service shall be in the form and manner provided by law for service in civil actions. (g) Upon return to be made by the sheriff showing service of the order upon any landowner, the clerk shall note in the records of the county court the record of the service, showing the date thereof and the person served, which shall be and become a part of the permanent records of the court.

**CLAIMS FOR DAMAGES:** (i) If the owner of the land over which any road shall hereafter be so laid out by the court shall refuse to give a right of way therefor, then the owner shall have the right to present his or her verified claim to the county court for damages the owner may claim by reason of the road's being laid out on his or her land. (j) If the owner is not satisfied with the amount allowed by the court, he or she shall have the right to appeal, as now provided by law from judgments of the county court. (k) However, no claim shall be presented for such damages after twelve (12) months from the date of the service of the order as provided in this section. Hearing(s) may commence on the damages to be awarded to the landowners.

**ONE BEST PRACTICE ON HEARING PROCEDURES ON CLAIMS BY LANDOWNERS:**

The procedure for an evidentiary hearing can vary. The goal is to provide due process, a meaningful hearing and a presentation of

substantial evidence from which the court can make and support its ultimate ruling.

STEP 1: The Court should swear in all of the witnesses to the effect of: "Do you solemnly swear or affirm to tell the truth, the whole truth and nothing but the truth"?

STEP 2: The parties should be allowed to have their own legal representation.

STEP 3: **One manner** is as follows: allow the landowner to proceed to present his claim for just compensation. The court *may* direct the presentation of evidence by the court directing the landowners to proceed first. Afford the landowners to testify and call witnesses, including themselves, appraiser or whomever to testify (under oath as to their opinions of just value and the characteristics of the subject lands). The landowner has the burden of proof to prove his claim for just compensation.

APPEAL: An aggrieved landowner has the right to appeal a final order from county court to circuit court. The appeal period is generally (30) thirty days from entry of the final order. See: 14-298-116, 14-298-120. See also: 14-298-122 which cures defects in actual notice by constructive notice of a duly filed order. Finally, see also: The Rules 1 & 9 of the "District Court Rules" (formerly "Inferior Court Rules"). {RULE 1: include district court and "county court"; Rule 9 also generally provides for (30) thirty days from entry of a final order. The appeal to circuit court is an appeal *de novo* which means: "Anew; fresh; a second time". See: *McGhee v. Glenn, County Judge*, 428 S.W.2d 258 (Ark. 1968); and *Oliver v. Washington County*, 940 S.W.2d 884 (Ark. 1997). A trial *de novo* is trying a matter a second time as if it had not been heard before.

Generally, the sole issue in a condemnation case is just compensation; and in Arkansas the landowner has the burden of proof of just compensation. *Property Owners Improv. Dist. V. Williford*, 40 Ark. App. 172 (1992); and *Baumeister v. City of Fort Smith*, 23 Ark. App. 102 (1988).

It is sufficient that the county acting as condemning party submit an estimate of just compensation.

**Replacement of Washed-Out Road: A.C.A. §14-298-123:** (a) When a county road is injured or destroyed by washing of any lake, river or creek, it is the duty of the overseer of the road district to

immediately notify the judge in writing of the nature and extent of the damage. (b) If the judge shall be satisfied that the road has been injured or destroyed to such extent as to inconvenience the traveling public, the judge shall appoint three (3) viewers. They may, if in their judgment it is necessary, take with them a competent surveyor and proceed to view and survey a new road upon such ground as will accommodate the traveling public. (c) The viewers shall determine the compensation to be allowed the owners of the property sought to be appropriated, at its true value, and the damages occasioned by the new road and shall make a report of their doings in the manner pointed out in this chapter as the duties of viewers of new roads. (d) Appeals may be taken from the appointment and orders of the judge and from the assessment allowed by the viewers as a jury to the owners of the property, in the manner provided by this chapter, within the time allowed by law, after the first regular term of the court thereafter held. (e) The appointment of viewers and order of the judge provided in this chapter shall be recorded in the records of the court. (f) The county court shall be governed in the reception, approving, and recording of the report of viewers, in all respects, as is prescribed in the case of new roads, except no notice of the destruction or injury to the road shall be required except as required by this section. (g) All costs, damages, and expenses arising under the provisions of this section shall be paid out of the county treasury on the warrant of the county clerk.

**History.** Acts of 1871, Act 26, § 59, p. 56; Acts of 2005, Act 1200, § 14, eff. Aug. 12, 2005.

**Flood Control Improvements: A.C.A. §14-16-112:** Counties are authorized to enter, take and hold any lands, interest, easement, etc. whether by purchase, grant, donation, etc. that may be necessary and proper for locating, constructing, operating, repairing or maintaining any floodway, reservoir, spillway, levee or diversion, or other flood control improvements. County has power to condemn for these purposes. (b) Nothing in this section shall ever be so construed or applied as to relieve the federal government of any liability or responsibility which it has assumed by the passage of the Flood Control Act of May 15, 1928,<sup>1</sup> or the Flood Control Act of June 15, 1936,<sup>2</sup> or any other existing law, or any law that may hereafter be passed by the United States Congress.

**History.** Acts of 1955, Act 73, § 1.

**Formerly** A.S.A. 1947, § 17-315.

In *Craig v. Greenwood District of Sebastian County*, 91 Ark. 274 (1909) the court explains that an unauthorized use of another's land by the public cannot become a basis for a claim against the county for compensation.

APPENDIX:

ORDERS LANDLOCKED Ark. Code § 27-66-401

ORDERS VACATING COUNTY ROADS Ark. Code § 14-298-117

ORDERS VACATING PLATTED ROADS Ark. Code § 14-18-105

ORDERS RETURNING LOTS TO ACREAGE Ark. Code §14-41-302

ORDERS ALTERING COUNTY ROADS Ark. Code §14-298-124

ORDERS EMINENT DOMAIN Ark. Code §14-298-120

BEFORE THE COUNTY COURT OF SEARCY COUNTY, ARKANSAS

KENDALL BIGGERS  
A/K/A KENNY BIGGERS

PETITIONER

VS.

NO. CO-2008-01

CAIROL BAYSINGER; TIMMOTHY BAYSINGER;  
PAUL BROWN; AND BILL BAYSINGER

RESPONDENTS

ORDER

On this \_\_\_\_\_ day of December, 2009, came before the Court the Petition of Kednall Biggers, Petition having been filed by and through legal counsel, Mark Cooper, Attorney at Law, and the court does hereby ORDER as follows:

1. The Court previously appointed three (3) viewers and the viewers have filed their written report in the above-styled case. The County Clerk shall forthwith deliver a copy of the report of the viewers to: Cairol Baysinger, Timothy Baysinger, Bill Baysinger, Paul Brown, Jerry Patterson, Kendall Biggers and Mark Cooper, Attorney for Petitioner, the attorney of record by U.S. mail, postage prepaid.
2. The viewers: Michael Jordon, Kevin Elliot and Benny Morrison are hereby directed to come to the courthouse at the Paul Jones Courtroom at the Courthouse Square in Marshall, Arkansas on Wednesday, the 27<sup>th</sup> day of January, 2010, at 10:00 a.m. The parties may be represented by legal counsel and present evidence and cross-examine witnesses.
3. The parties are hereby summoned to court to appear at the Searcy County Court located at the Paul Jones Courtroom at the Courthouse Square in Marshall, Arkansas on the Wednesday, the 27<sup>th</sup> day of January, 2010, at 10:00 a.m. The parties may be represented by legal counsel and present evidence and cross-examine witnesses.

4. After the conclusion of all of the evidence at the hearing, due process and due consideration the Court will render its ruling by written order regarding all matters before the court, including the issue of necessity.
5. Service of this Order along with a copy of the Petition shall be made upon Kendall Biggers and Mark Cooper, Attorney for Petitioner, the attorney of record by U.S. mail, postage prepaid. The deposit of \$1,000 made by the Petitioner has been depleted. Petitioner has until January 10, 2010 to deposit an additional \$500.00 into the registry of the Court.
6. Service of this Order along with a copy of the Petition shall be made upon the parties having lands adjacent to Petitioners lands by deputy sheriff by delivery to: Cairol Baysinger, Timothy Baysinger, Bill Baysinger, Paul Brown, Jerry Patterson. The Sheriffs office shall be paid \$50.00 for service and return of service on the Defendants and their counsel in accordance with this order from the funds deposited into the registry of the court by Petitioner as directed above.
7. The Hon. Stacey Avey has been duly appointed by the Governor of the State of Arkansas to hear the subject dispute and directs this Order be filed in the County Court of Searcy County and served by the deputies for the Searcy County Sheriff accordingly.

IT IS SO ORDERED.

---

HON. STACEY AVEY  
COUNTY JUDGE



BEFORE THE COUNTY COURT OF SEARCY COUNTY, ARKANSAS

SUSAN C. STAPLES;

PLAINTIFF

RE:

CASE NO. CO-19-1

JAMES DAVID KING & \_\_\_\_\_ KING,  
HUSBAND AND WIFE; AND  
JENNE ERWIN & \_\_\_\_\_ ERWIN  
HUSBAND AND WIFE

DEFENDANTS

ORDER

On this day comes before the Court, the subject Complaint of Susan C. Staples, Plaintiff, acting by and through her attorney, Jerry D. Patterson, Attorney at Law, filed on July 22, 2019, seeking an Order from this Court to grant the subject petition for access across the Defendants land to the public road. On October 11, 2019, a summons was issued, notifying the Defendants that a lawsuit had been filed against them, demanding relief as stated in the Complaint. The Court having reviewed the petition and being well and sufficiently advised of the law, FINDS and ORDERS as follows:

(1). Ark. Code §27-66-401 explicitly provides that a landowner shall give written notice (20) twenty days before the filing of the petition. The required notices and service of the notice were not provided to the Defendants as mandated by Ark. Code §27-66-40.

(2). At the time of the filing of the subject Complaint and the letters of January 19, 2019, the Defendants were not the legal owners of this property. The property was part of the Estate of Dewey Max King (deceased). Also, at the time, the Plaintiff filed her lawsuit with this Court, the Estate of Dewey Max King had not been concluded.

(3). Furthermore, the notice purported to be provided to Defendant James David King's was mailed and delivered to a wrong address.

(4). Therefore, the Court dismisses this case without prejudice and provides that the matter may be refiled within one (1) year from the dismissal in accordance with the Arkansas Rules of Civil Procedure.

IT IS SO ORDERED.

---

COUNTY JUDGE

---

DATE

BEFORE THE COUNTY COURT OF GREENE COUNTY, ARKANSAS

ROBERTA WALLACE TRUST

PLAINTIFF

VS.

NO. CO-2018-35

ROMONA THRELKELD REVOCABLE TRUST;  
ROBERT KELLER; LEE ANN KELLER;  
DIANE KELLER; BAYSINGER;  
TIMMOTHY BAYSINGER; PAUL BROWN; AND  
BILL BAYSINGER

DEFENDANTS

ORDER

On the 2nd day of October, 2020, came before the Court the Petition of Roberta Wallace Trust, the Petition and Amended Petition filed by and through legal counsel, Mike Trail, Attorney at Law, and an Answer filed by Robert Thompson, Attorney of Law, on behalf of Separate Defendant, was filed by \_\_\_\_\_, Attorney at Law on behalf of Separate Defendants.

The Court being well and sufficiently advised of the facts, the law, the pleading, the briefs, the evidence and the arguments of counsel, does hereby FIND and ORDER as follows:

(1). Petitioner provided the requisite notice to the parties as required by law. Summons was issued, service made and appearances made by Separate Defendants: \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_.

(2). The County Court of Greene County has jurisdiction over this matter and the parties.

(3). Plaintiff asserted that Plaintiff owns real property in Greene County, Arkansas that is land locked and not accessible by public road. Plaintiff's land is more specifically described in the plat

identified as **Exhibit “A”** containing approximately 86.48 acres in the aggregate more or less. A copy of **Exhibit “A”** is attached hereto and incorporated into this Order.

(4). Robert Thompson, Attorney for Separate Respondent, Robert Keller, LeeAnn Keller, and Diane Keller referenced Arkansas Code Annotated 27-66-401 asserted that the property is not landlocked and that the Plaintiff “has legal access” to the lands described and reflected as **Exhibit “A”**.

(5). The threshold question for this Court is to determine whether or not Plaintiff’s lands identified in Exhibit “A” are legally landlocked as defined by Arkansas law.

(6). Plaintiff has legal access to and from their lands, **Exhibit “A”**, by virtue of a public road, county road \_\_\_\_\_. It is undisputed that Plaintiff has unfettered legal access to and from their lands identified in **Exhibit “A”**.

(7). In their Complaint and Amended Complaint, Plaintiff recites that village creek creates an impediment for their physical access to their entire aggregate lands of approximately 86.48 acres in the aggregate more or less as reflected by **Exhibit “A”**.

(8). In their Complaint and Amended Complaint, Plaintiff goes into detail as to their inability to physically cross village creek which bisects their lands reflect **Exhibit “A”** containing approximately 86.48 acres in the aggregate more or less into 71.3 acres more or less north of village creek and 15.17 more or less south of village creek.

(9). It is undisputed that in the past, Plaintiff enjoyed an additional access to their lands reflected within **Exhibit “A”** containing approximately 86.48 acres, by virtue of a public railroad crossing over the Union Pacific Rail Road, formerly the Cotton Belt Rail Road.

(10). Perhaps, Plaintiff may not be able to re-establish the additional legal ingress/egress on the eastern border due to the railroad tracks and closure of the additional legal access by the Union Pacific Railroad.

(11). Nonetheless, Plaintiff has legal access to and from their lands, **Exhibit “A”**, by virtue of a public road, **county road** \_\_\_\_\_ . Court finds that that Plaintiff is not legally landlocked. It is undisputed that Plaintiff does not enjoy physical access to their entire acreage, but that is not the legal standard. It is not the law, that landowners may petition a Court to grant them access across their neighbor’s lands to provide them additional legal access to their entire acreage. Greene County, Arkansas, and the State of Arkansas in general has thousands of tributaries, creeks and drainage ditches that bisect the various holdings of real property owners throughout Arkansas. By virtue of their pleadings, it is shown that the lands identified in Exhibit “A” are not legally landlocked. The undisputed evidence is insufficient to warrant Plaintiff to order and grant access across the lands of the Defendants.

IT IS THEREFORE ORDERED on this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Rusty A. McMillon, Greene County Judge

\_\_\_\_\_  
Phyllis Rhynes, County Clerk

BEFORE THE COUNTY COURT OF POLK COUNTY, ARKANSAS

\_\_\_\_\_ PETITIONER(S)

VS. Case No. \_\_\_\_\_

\_\_\_\_\_ RESPONDENTS

ORDER OF STAY

On this day came before the court the Petitioner(s), \_\_\_\_\_, by and through their legal counsel, \_\_\_\_\_ and the Respondent(s), \_\_\_\_\_ by and through their legal counsel, \_\_\_\_\_ to entertain jurisdiction over the matter and to the subject petition made pursuant to A.C.A. § 27-66-401 et seq. seeking for the court to grant an easement to, through, over and across the lands of Respondent and to award damages thereupon. The court being well and sufficiently advised as to the law, the pleadings and facts doth hereby FIND and ORDER as follows:

1. Under Arkansas law, submission of a petition pursuant to the county court for the extraordinary remedy afforded under A.C.A. § 27-66-401 et seq. is to be made solely upon demonstration by petitioner of particular jurisdictional, threshold facts including the demonstration of the necessity for the grant of an easement. Conclusory allegations are insufficient for the county court to entertain jurisdiction to grant the extraordinary and special remedy provided by A.C.A. § 27-66-401 See: Rules, 8(a)(1), 9 and 12(b)(6) of the Ark. R. Civ. Proc. Jurisdiction must be determined solely

from the pleadings and if jurisdiction is not established by the pleadings the court is not to proceed further. Mckinney v. City of El Dorado, 308 Ark. 284, 824 S.W. 2d 402 (1985).

2. The court on its own motion, sua sponte, must now either stay or dismiss the subject case based upon the genuine issue of fact that petitioner may have a legal means of ingress or egress by prescriptive easement, or easement by implication. In such as case, the county court should either stay or dismiss the proceedings before the county court to allow the parties to adjudicate the existence of legal ingress and egress cognizable before the Polk County Circuit Court. Denial of physical ingress and egress is irrelevant as to whether petitioner has the legal right and property right of access his or her lands by an existing prescriptive easement or easement by implication. See: Pippin v. May, 78 Ark. 18, 93 S.W. 64 (1906); Armstrong v. Harrell, 279 Ark. 24, 648 S.W.2d 450 (1983) and Burton v. Hankins, 98 Ark. App. 51 (2007). It is apparent that petitioners' lands do not have an expressed easement of ingress and egress to and from their lands created by instrument and conveyance. Kennedy v. Papp, [294 Ark. 88](#), [741 S.W.2d 625](#) (1987). However, Petitioner has not demonstrated the threshold jurisdictional fact, i.e., that there is no easement by prescription or by implication with unity of title as required by law. See: Manitowoc Remanufacturing, Inc. v. Vocque, [307 Ark. 271](#), [819 S.W.2d 275](#) (1991); Fields v. Ginger, [54 Ark. App. 216](#), [925 S.W.2d 794](#) (1996); Stone v. Halliburton, [244 Ark. 392](#), [425 S.W.2d 325](#) (1968). Hoover v. Smith, [248 Ark. 443](#), [451 S.W.2d 877](#) (1970); Craig v. O'Bryan, [227 Ark. 681](#), [301 S.W.2d 18](#) (1957); Mettetal v. Stane, [216](#)

Ark. 836, 227 S.W.2d 636 (1950); Messer v. Houston, 212 Ark. 349, 205 S.W.2d 467 (1947).

3. The person who asserts an easement has the burden of proving the existence of the easement. Kennedy v. Papp, 294 Ark. 88, 741 S.W.2d 625 (1987). The court therefore directs the Petitioner to conduct a good faith inquiry as to the existence of either: a prescriptive easement or easement by implication. If after conducting a good faith inquiry Petitioner finds that the subject lands are not landlocked due to the existence of a property right of Petitioner in an easement recognized by Arkansas law, then the remedy before the county court shall be foreclosed and dismissed so that Petitioner may seek a declaratory judgment before the circuit court. If after conducting a good faith inquiry Petitioner finds that the subject lands are as a matter of undisputed fact landlocked due to the lack of an easement by prescription or easement by implication with unity of title, then the Petitioner shall duly amend his petition before the county court and so demonstrate with particularity.

THEREFORE, the County Court of Polk County, Arkansas, hereby stays the above styled case.

IT IS SO ORDERD.

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Hon. Ray B. Stanely  
Polk County Judge

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Date



BEFORE THE COUNTY COURT OF SEBASTAIN COUNTY, ARKANSAS  
GREENWOOD DISTRICT

BOBBY ALLEN DOLAN AND BETTY DOLAN,  
HUSBAND AND WIFE; AND BOBBY ALLEN  
DOLAN, II. AND JACKIE DOLAN, HUSBAND  
AND WIFE

PETITIONERS

VS.

NO. CC-2008-01-G

ARKANSAS STATE HIGHWAY COMMISSION,  
JAMES BUTLER AND JAN BUTLER, JAMES  
MORRIS AND OLETA MORRIS AND ANY  
OTHER LANDWONERS WHICH THE VEIWERS  
FIND THAT THE ROAD SHOULD PROPERTY BE  
GRANTED AND CONSTRUCTED

RESPONDENTS

ORDER

On this day \_\_\_\_\_ day of February, 2009, came before the Court for hearing the petition of Petitioners, appearing by and through legal counsel, Bill Walters, Attorney at Law, the pending motion to dismiss or in the alternative for summary judgment of Separate Defendant, the Arkansas State Highway Commission ("ASHC"), appearing by and through Angela R. Dodson, Staff Attorney, and the motion to dismiss or in the alternative for summary judgment Separate Respondents, James and Oleta Morris, appearing by and through legal counsel, C. Brain Meadors, Attorney at Law, and Separate Respondents, James and Jan Butler, appearing by and through legal counsel, C. Brain Meadors, Attorney at Law, Hal W. Davis. The Court being well and sufficiently advised as to the facts, the law, the pleadings, briefs and arguments of counsel doth hereby FINDS as follows:

1. That the parties were requested to stipulate {,it was stipulated,} and the Court finds that the subject petition is sought pursuant to Ark. Code §§ 27-66-401 for the County Court of Sebastian County, Arkansas, to entertain Petitioners petition for a road for their lands consisting of approximately 3.15 acres more particularly described in the petition.

2. The ASHC asserted that the subject proceedings were commenced for a county road under Ark. Code §§ 14-298-101, however, that assertion is in error. That the parties were requested to stipulate {,it was stipulated,} and the Court finds that Dan L. Flowers, Director of the Arkansas State Highway & Transportation Department is not the Chief Executive Officer of the Arkansas State Highway Commission. See: Arkansas Constitution, Amendment 42; and Ark. Code § 27-65-122. There is no evidence that the Director of the Arkansas State Highway & Transportation Department or the person served is authorized to accept service for the ASHC, Respondents herein.
3. That the parties were requested to stipulate {,it was stipulated,} and the Court finds that the Petitioners' lands consisting of approximately 3.15 acres more particularly described in the petition were subject to imposition of control of access by virtue of eminent domain proceedings and judgment rendered by the Circuit Court of Sebastian County, Arkansas, Case No. CV 2006-146-GV. See: Ark Code §§27-67-301 et seq. and Ark Code §§27-67-102 et seq.
4. That the parties were requested to stipulate {,it was stipulated,} and the Court finds that the Petitioners' lands consisting of approximately 3.15 acres more particularly described in the petition are indeed landlocked and without legal or physical means of ingress and egress to a public road.
5. Petitioners duly requested to be allowed over certain lands owned by Separate Respondents, James and Oleta Morris and Separate Respondents, James and Jan Butler, as required by law. Respondents refused which is entirely their right under the law. Petitioners duly provided the requisite 20 day notice to Separate Respondents, James and Oleta Morris and Separate Respondents, James and Jan Butler, prior to making their application as required by law.

The Court being well and sufficiently advised as to the facts, the law, the pleadings, briefs and arguments of counsel doth hereby ORDERS as follows:

1. The County Court of Sebastian County, Arkansas, has proper jurisdiction and venue over the subject petition sought under Ark. Code §§ 27-66-401 for a road for the lands of Petitioners consisting of approximately 3.15 acres more particularly described in the petition.
2. That the motion to dismiss the ASHC for failure to serve process is granted. Dan L. Flowers, Director of the Arkansas State Highway & Transportation Department is not the Chief Executive Officer of the Arkansas State Highway Commission and there is no evidence or genuine dispute that the Director of the Arkansas State Highway & Transportation Department or the person served with process is authorized to accept service for the ASHC, Respondents herein.
3. Petitioners' lands consisting of approximately 3.15 acres more particularly described in the petition are indeed landlocked and without legal or physical means of ingress and egress to a public road. Petitioners' lands consisting of approximately 3.15 acres more particularly described in the petition were subject to imposition of control of access by virtue of eminent domain proceedings and judgment rendered by the Circuit Court of Sebastian County, Arkansas, Case No. CV 2006-146-GV. See: Ark Code §§27-67-301 et seq. and Ark Code §§27-67-102 et seq. The control of access imposed by the aforesaid eminent domain proceedings shall not be disturbed by this court.
4. Petitioners duly requested to be allowed over certain lands owned by Separate Respondents, James and Oleta Morris and Separate Respondents, James and Jan Butler, as required by law. Respondents refused which is entirely their right under the law. The Court hereby appoints the three (3) viewers as follows: \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_. The

viewers are directed to come to the courthouse at \_\_\_\_\_ on \_\_\_\_\_, 2009, to accept their office, receive the oath of office, and thereafter perform their obligations as required by A.C.A. § 27-66-402. The premises of the parties shall be open to inspection by the viewers.

5. Thereafter, at \_\_\_\_\_, on \_\_\_\_\_, 2009, the viewers shall make their written report and shall testify in court thereon. The parties may be represented by legal counsel and present evidence and cross-examine witnesses. After the conclusion of all of the evidence at the hearing and due consideration the Court will render its ruling by written order regarding all matters before the court, in particular the pending issue of necessity.
6. Service of this order shall be made upon the parties by delivery of a file-marked copy of same to the attorney of record by U.S. mail, postage prepaid or via hand delivery. Any party to this proceeding without legal counsel shall be served by delivery of same to the address of the party by U.S. mail, postage prepaid or via hand delivery.

IT IS SO ORDERED.

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HON. DAVID HUDSON  
SEBASTIAN COUNTY JUDGE

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DATE

BEFORE THE COUNTY COURT OF NEVADA COUNTY, ARKANSAS

DON CALLICOTT; AND  
JANINCE CALLICOTT

PETTITONERS

RE: PETITION TO VACATE A PORTION OF COUNTY ROAD NO. 406

CC 18-17

CITIZENS OF NEVADA COUNTY &  
OWNERS OF REAL PROPERTY SITUATED  
ON COUNTY ROAD NO 406

RESPONDENTS

ORDER

On July 7, 2002, Petitioners, Don Callicott and Janice Callicott, acting by and through their attorney Eric Hughes, Attorney at Law, filed a Petition to Vacate a portion of County Road No. 406 in Nevada County, Arkansas. The subject segment of County Road No. 406 sought to be vacated by the petition is described as that portion of County Road No. 406 which is located between the intersection of County Road No. 406 and County Road No. 23 on the South side of the Callicott property to where it exits the Callicott property on the North. The Court having reviewed the petition and being well and sufficiently advised of the law, FINDS and ORDERS as follows:

- (1). Notice of the filing of the subject petition and notice of the hearing set below shall be published in the local newspaper as required by law and in accordance with Ark. Code §14-298-102. Proof of publication of the notice shall be filed in this case.
- (2). Furthermore, the County Clerk is HEREBY ORDERED to send: a file marked copy of the subject petition, this order setting the hearing below, and a copy of Ark Code §14-298-117, attached hereto and marked "Exhibit A" to all landowners having an ownership interest in the lands on any portion whatsoever of County Road No 406 in Nevada County, Arkansas, by U.S. Mail certified mail return receipt requested. The County Assessor shall assist in providing the Clerk the necessary information to fulfill this Order. Proof of service of this foregoing including the returned receipts shall be filed in this case.

(3). As required by Ark. Code §14-298-103 and by law it was incumbent upon the petitioners to assure proof of publication and to post bond for use by the county for the payment of: costs of notice of publication and service; and for the costs of the services of viewers. The subject petition acknowledges the obligation for posting bond within paragraph (6) of the subject Petition to Vacate. In lieu of bond, the petition may deposit the sum of \$600.00 as an estimated sum for the payment to the county for reimbursement of the aforementioned costs. Failure to deposit the sum of \$600.00 as per the order of this Court or to post bond as required by Ark. Code §14-298-103 in the sum of \$600.00 on or before September 15, 2020, shall result in dismissal of this case without prejudice.

(4). The following persons shall: be appointed to act a viewers in this case and take the oath to perform their duties as set forth under Ark. Code §14-298-117. The viewers appointed to serve in this case by the Court are as follows:

(a).Dale Booker,Viewer;

(b).Gary Jester,Viewer;

(c). Reed Koger, Viewer

(5). The viewers shall fulfill their oath and duties, as provided by Ark Code §14-298-117, and review the subject Petition to Vacate along with the written objections of the Respondents filed in this case, view the entirety of County Road No. 406 and the surroundings, and make a written report as to their opinions and reasons for their opinions to be filed in this case and forwarded to the parties by the County Clerk,.

(6). On the day of October 30, 2020, at 9 a.m. a hearing shall be held by the Court at the Nevada County Court House 215 E. 2<sup>nd</sup> Street, Prescott, Arkansas, Room , to review the opinion of the viewers and make the final order in this case. As provided in Ark. Code §14-298-117, if the viewers

report favors vacating the road or any part of it, the Court, if it deems the report reasonable and just, may declare the road, or any part thereof, vacated, agreeable to the report of the viewers. Likewise, if the viewers report favors not vacating the road, or any part of it, the Court, if it deems the report reasonable and just, may decline to declare the road, or any part thereof, vacated, agreeable to the report of the viewers. The viewers shall be ordered to be compensated in accordance with Ark. Code Ark Code §14-298-118 by payment by the court from the deposited funds or bond tendered by the Petitioners. The hearing on this matter for the Court to entertain the report of the viewers, serving as the jury in this matter, shall be open to the public.

(7). The County Clerk shall deliver a copy of this Order along with “**Exhibit A**” to the Attorney for the Petitioners, Attorney, and delivered to the Respondents along with the subject petition as set forth in paragraphs (1) and (2) above.

IT IS SO ORDERED.

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COUNTY JUDGE

---

DATE

C-2010-65R

**IN THE COUNTY COURT OF LITTLE RIVER COUNTY, ARKANSAS**

**HANSON AGGREGATES LLC AND AREA LAND OWNERS PETITIONERS**

**IN THE MATTER OF THE RELOCATION OF  
LITTLE RIVER COUNTY ROAD 126 IN THE  
ARKINDA COMMUNITY**

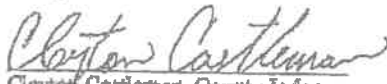
**ORDER**

Came now to hear on this 23<sup>rd</sup> of July, the Petition of Hanson Aggregates LLC as well as ten (10) property owners seeking the relocation of County Road 126, and based upon the Petition, and other matters and things before the Court, the Court finds:

1. Petition for relocation of 126 from present location to location as presented in Exhibit A is proper and legal in all respects.
2. Relocation will not substantially increase the length of the road.
3. No objections have been filed written or verbal with the court.
4. Relocation is needed by Hanson Aggregates and land owner to allow continued mining of aggregate in the area.
5. Hanson Aggregates has agreed to pay all cost in relocating Little River County Road 126.
6. The road will be built to exceptionable standard of Little River County.
7. The present Little River County 126 will not be closed until the new location is finished and an easement is exchanged.
8. Little River County will remove metal culvert from the present Little River County Road 126.
9. When mining in the area is finished, if a permanent easement is not furnished to Little River County, Hanson Aggregates or it successor will bear total expenses for returning Little River County Road 126 to present location of which Hanson will bear all expenses and construct the road to Little River County specification.

**IT IS THEREFORE CONSIDERED, ORDERED, ADJUDGED AND DECREED** that the petition by Hanson Aggregates and the ten (10) petitioners be granted to relocate Little River County Road 126 in accordance with Exhibit A.

**IT IS ORDERED AND ENTERED ON THE 23<sup>RD</sup> DAY OF JULY, 2009**

  
Clayton Castleman, County Judge

**FILED**

7/23/09

DEANNA SHIPLEY, CLERK

 D.C.

**RECORDED**

BOOK V PAGE 142-B





\*2010R001341\*

EASEMENT

RECORDED ON

05/18/2010 06:49:49AM

ANDREA HILLINGSLEY - CLERK

LITTLE RIVER COUNTY, AR

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

Lehigh Hanson, Inc.  
300 East John Carpenter Freeway, Suite 1645  
Irving, Texas 75062  
Attn: General Counsel

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

ACCESS EASEMENT AGREEMENT

This Access Easement Agreement (this "Agreement") is made as of February  
\_\_, 2010 (the "Effective Date"), by and between HANSON AGGREGATES LLC  
("Grantor") and LITTLE RIVER COUNTY, ARKANSAS ("Grantee"); with reference to  
the following facts:

RECITALS:

A. Grantor is the grantee of an easement interest over those portions of  
certain real property located in Little River county, Arkansas, as more particularly  
described on the attached Exhibit "A" (the "Burdened Property"), attached hereto and  
made a part hereof.

B. Subject to the terms and conditions set forth in this Agreement and in  
those certain Access Easement Agreements to which Grantor is a party and acquired an  
easement interest over that certain portion of the Burdened Property which is depicted  
and described as "Proposed Route of Relocated LR 126" on the attached Exhibit "B"  
(the "Easement Area"), Grantor desires to grant, and Grantee desires to accept, an  
easement over the Easement Area for the purposes of ingress, egress, regress,  
passage and delivery for vehicular and pedestrian traffic for the benefit of the public.

AGREEMENT:

Therefore, for valuable consideration, the receipt and sufficiency of which is  
acknowledged, Grantor and Grantee agree as follows:

1. Grant of Easement and Term: Grantor hereby grants to Grantee a non-  
exclusive easement on, over, and through the Easement Area (the "Easement") for the  
purposes of ingress, egress, regress, passage and delivery for vehicular and pedestrian  
traffic for the benefit of the public for a term commencing upon the Effective Date and  
expiring September 30, 2011 (the "Term"). Grantor shall have the right to extend the  
Term for one (1) additional period of thirty (30) months and one (1) subsequent  
additional period not to exceed thirty (30) months to be determined in Grantor's sole  
discretion. Grantor shall notify Grantee in writing of any Term extension at least thirty  
days prior to the expiration of its initial Term and the first extension of the

initial Term. An extension of the Term shall be included in the definition of "Term" upon the exercise of the extension.

2. Consideration

Grantee agrees to pay to Grantor, consideration in the amount of Ten and No/100 Dollars for the Easement upon the commencement of the Term.

3. Location of Easement Area The location of the Easement Area is depicted and identified as "Proposed Route of Relocated LR 126" on Exhibit B. Grantor shall not have the right to relocate, disturb or use the Easement Area during the Term other than occasional maintenance as mutually agreed upon between Grantor and Grantee in writing.

4. Grantee's Covenants Other than the right to modify the Easement Area for Grantee's purposes stated herein and maintain and repair the Easement Area as modified by Grantee, Grantee shall not perform material alterations to the Easement Area without Grantor's prior written consent, which Grantor may not unreasonably withhold, condition, deny or delay. Grantee shall not damage or commit any kind of waste upon the Easement Area or any improvement, equipment or personal property located thereon. Grantee shall maintain and repair the Easement Area in a condition reasonably comparable to the condition of the Easement Area following the performance of modifications thereto by Grantee.

5. Grantor's Covenants Grantor shall not, and shall use commercially reasonable efforts to cause its agents, operators, invitees and contractors not to, interfere with Grantee's rights set forth in this Agreement.

6. Indemnity, Waiver and Release

A. GRANTEE AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS GRANTOR, ITS PARENT AND AFFILIATED COMPANIES, AND THEIR RESPECTIVE MEMBERS, DIRECTORS, OFFICERS, REPRESENTATIVES, ADMINISTRATORS, AGENTS, PARTNERS, EMPLOYEES, ATTORNEYS, INSURERS, SUCCESSORS AND ASSIGNS AND EACH OWNER OF THE BURDENED PROPERTY AND ITS RESPECTIVE PARTNERS, OFFICERS, DIRECTORS, HEIRS, EXECUTORS AND ADMINISTRATORS (COLLECTIVELY, THE "INDEMNIFIED PARTIES"), FROM AND AGAINST ANY AND ALL CLAIMS (INCLUDING CLAIMS FOR WRONGFUL DEATH), DAMAGES, ACTIONS, CAUSES OF ACTION, LIABILITIES, LOSSES, COSTS, REASONABLE ATTORNEYS' FEES AND ANY OTHER REASONABLE EXPENSES BASED ON, ARISING OUT OF, IN CONNECTION WITH OR RELATED IN ANY WAY TO THE USE OF THE EASEMENT AREA BY, THROUGH OR UNDER GRANTEE (INCLUDING THE USE BY THE PUBLIC) AND/OR THE FAILURE OF GRANTEE TO FULFILL ITS OBLIGATIONS UNDER THIS AGREEMENT, EXCEPT TO THE EXTENT CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF GRANTOR.

B. Grantee hereby waives and releases Grantor and the Indemnified Parties from any and all claims for damages, death, personal injury, loss of property or property damage that may arise, or that may subsequently accrue to Grantee as a result of the Easement Area and its use thereon by the public.

7. Covenants Running With the Land Grantor's and Grantee's rights and obligations under this Agreement are covenants running with the land, which shall burden and benefit the Burdened Property and the present and future owners thereof for the benefit and burden of the public.

8. Notices Any notice to be given hereunder shall be delivered in writing by first class mail to the following address, as such may be changed in a written notice to the other party, and the second day following deposit in the United States Mail shall be deemed the date the notice is given:

if to Grantor:

Hanson Aggregates LLC  
8505 Freeport Parkway, Suite 500  
Irving, Texas 75063  
ATTN: Director of Mineral Resources

with a copies to:

Hanson Aggregates LLC  
300 East John Carpenter Freeway, Suite 1645  
Irving, Texas 75062  
ATTN: Land Manager, South Region

Lehigh Hanson, Inc.  
300 East John Carpenter Freeway, Suite 1645  
Irving, Texas 75062  
ATTN: General Counsel

if to Grantee:

Little River County

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

9. Binding Effect; Assignment This Agreement shall be binding on and shall inure to the benefit of the parties and their respective successors and assigns. Grantee shall not have the right to assign its interest granted in this Agreement. Grantor shall have the right to assign its right, title and interest under this Agreement in Grantor's sole discretion.

10. Entire Agreement This Agreement contains the entire Agreement between the parties relating to the subject of this Agreement. This Agreement may be cancelled, changed, modified or amended, in full or in part, only by a written and recorded agreement signed by both parties or their respective successors or assigns. Grantor and Grantee agree to sign (in recordable form) any instrument necessary or appropriate to reflect such cancellation, change, modification or amendment.

11. Attorneys' Fees If any legal proceeding arises concerning the interpretation of this Agreement, in addition to any other remedies at law or in equity, sought

or obtained by the prevailing party, the losing party shall pay the reasonable costs (including, without limitation, expert witness and other consultants' fees) and attorneys' fees of the prevailing party incurred both at trial and on appeal.

12. Recitals and Exhibits The Recital paragraphs set forth above and Exhibits attached to this Agreement are incorporated in this Agreement by reference as if set forth in full in this Agreement.

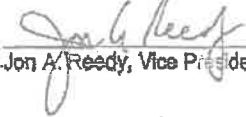
13. Applicable Law and Enforcement This Agreement is executed and delivered in the State of Arkansas and shall be construed and enforced in accordance with, and governed by, the laws of the State of Arkansas.

14. Counterparts This Agreement may be executed in two or more counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

This Agreement is entered into as of the last day and year set forth below and that date shall be entered in the first paragraph of this Agreement as the Effective Date.

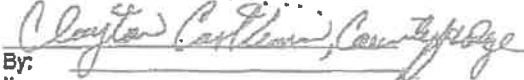
**GRANTOR:**

HANSON AGGREGATES LLC

  
\_\_\_\_\_  
Jon A. Reedy, Vice President

**GRANTEE:**

LITTLE RIVER COUNTY, ARKANSAS

  
\_\_\_\_\_  
By: Clayton Carlisle, County Judge  
Its: \_\_\_\_\_

STATE OF TEXAS )  
 ) ss.  
COUNTY OF DALLAS )

On February 1st, 2010, before me, Shusan G. Block  
a Notary Public in and for the State of Texas, personally appeared Chris D. Leuder  
personally known to me (or proved to me on the basis of satisfactory evidence) to be the  
person whose name is subscribed to the within instrument, and acknowledged to me  
that he executed the within instrument in his authorized capacity and that, by his  
signature on the within instrument, the person or entity upon behalf of which he acted  
executed the within instrument.

WITNESS my hand and official seal.

Shusan G. Block  
Notary Public in and For  
Said County and State

(Seal)



STATE OF ARKANSAS )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 2010, before me, \_\_\_\_\_, a  
Notary Public in and for the State of Arkansas, personally appeared  
\_\_\_\_\_ and \_\_\_\_\_, personally  
known to me (or proved to me on the basis of satisfactory evidence) to be the persons  
whose names are subscribed to the within instrument, and acknowledged to me that  
they executed the within instrument in their authorized capacities and that, by their  
signatures on the within instrument, the person or entity upon behalf of which they acted  
executed the within instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public in and For  
Said County and State

(Seal)

**EXHIBIT "A"****BURDENED PROPERTY**

*Legal description of Earl Altenbaumer Family property, Longacre property, Chewing property, Country Enterprises, Inc. property, Sikes Farms, Inc. property and Weyerhaeuser Company property; all located in Little River County, AR; and described as follows:*

**EARL ALTENBAUMER FAMILY PROPERTY:**

*The North One-half of Southeast Quarter (N $\frac{1}{2}$  SE  $\frac{1}{4}$ ) and the Fractional Northeast Quarter (Fr. NE $\frac{1}{4}$ ) lying South of Little River, in Section 16, Township 11 South, Range 30 West, Little River County, Arkansas; LESS AND EXCEPT the East One-third (E $\frac{1}{3}$ ) and the West One-third (W $\frac{1}{3}$ ) of the described lands; SUBJECT TO any and all other easements, restrictions and rights-of-way of record and any oil, gas and/or other mineral interests heretofore conveyed or reserved of record.*

**LONGACRE PROPERTY:**

*The West One-third of the North One-half of Southeast Quarter (W $\frac{1}{3}$  N $\frac{1}{2}$  SE $\frac{1}{4}$ ) and the West One-third of the Fractional Northeast Quarter ((W $\frac{1}{3}$  Fr. NE  $\frac{1}{4}$ ) lying South of Little River, in Section 16, Township 11 South, Range 30 West, Little River County, Arkansas; LESS AND EXCEPT the remaining Center  $\frac{1}{3}$  and the West One-third (W $\frac{1}{3}$ ); SUBJECT TO any and all other easements, restrictions and rights-of-way of record and any oil, gas and/or other mineral interests heretofore conveyed or reserved of record.*

**CHEWNING PROPERTY:**

*The East One-third of the North One-half of Southeast Quarter (E  $\frac{1}{3}$  N  $\frac{1}{2}$  SE  $\frac{1}{4}$ ) and the East One-third of the Fractional Northeast Quarter (E  $\frac{1}{3}$  Fr. NE  $\frac{1}{4}$ ) lying South of Little River, in Section 16, Township 11 South, Range 30 West, Little River County, Arkansas; LESS AND EXCEPT the remaining Center  $\frac{1}{3}$  and the East One-third (E $\frac{1}{3}$ ); SUBJECT TO any and all other easements, restrictions and rights-of-way of record and any oil, gas and/or other mineral interests heretofore conveyed or reserved of record.*

**COUNTRY ENTERPRISES, INC. PROPERTY:**

*S  $\frac{1}{2}$  SE  $\frac{1}{4}$  Section 16, T11S, R30W*

**SIKES FARMS, INC. PROPERTY:**

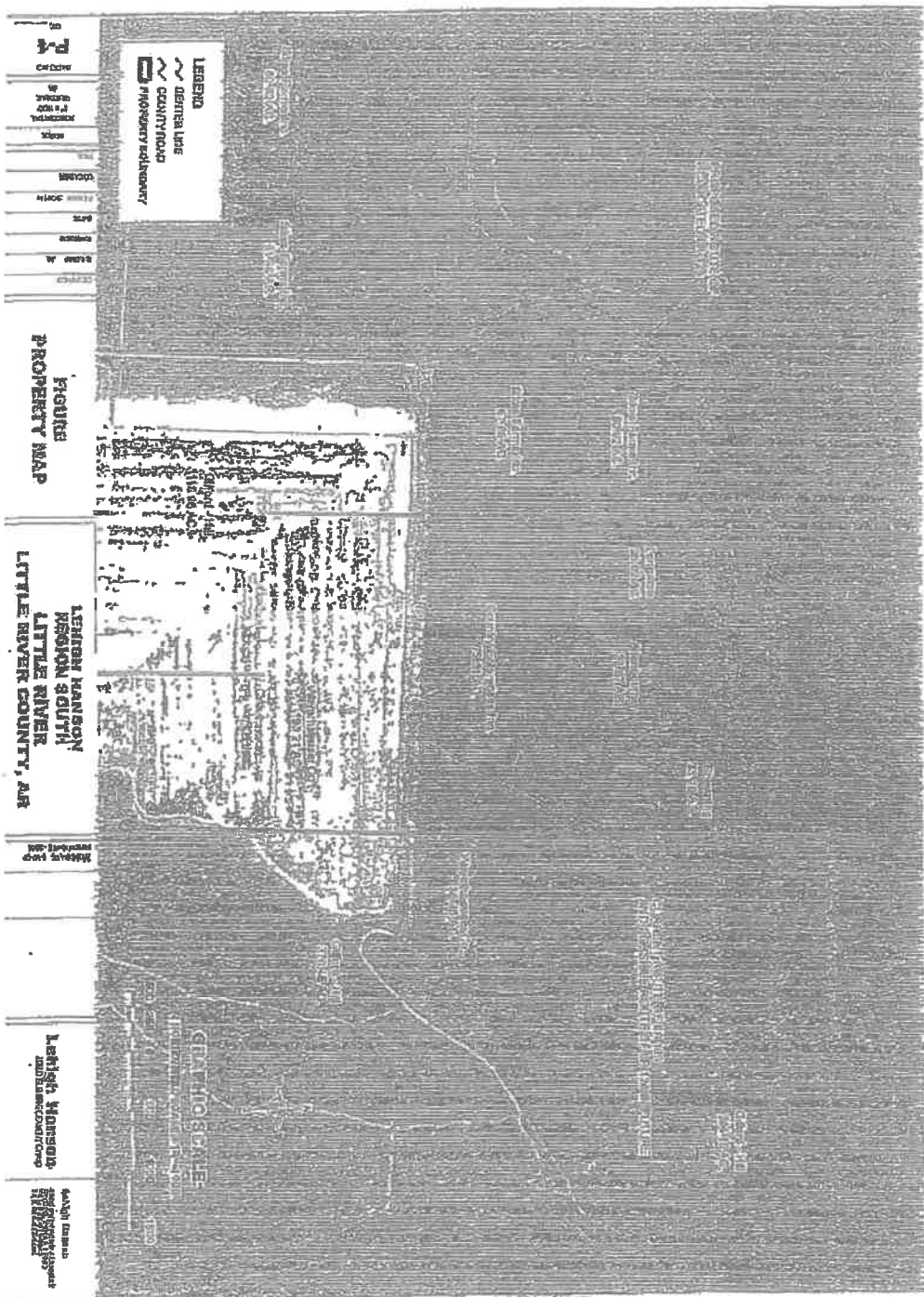
*110 acres Section 16, Township 11 South, Range 30 West*

**WEYERHAEUSER COMPANY PROPERTY:**

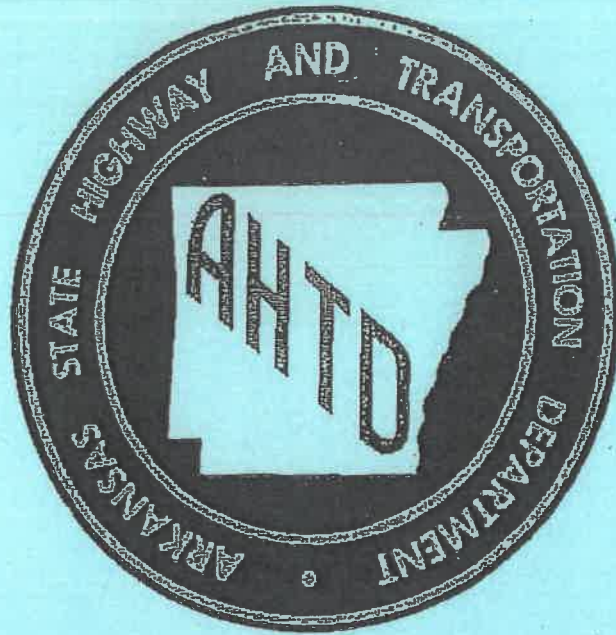
*SW  $\frac{1}{4}$  of SW  $\frac{1}{4}$  Section 15, Township 11 South, Range 30 West (40 acres more or less)*

**EXHIBIT "B"**  
**EASEMENT AREA**

*[Attach map of Easement Area (County Road Easement)]*







**County Judges Association of Arkansas**

**Appendix of Court Order Documents**

**Court Order**

**Centerline Description**

**Project Plans**

**Donation Petition**

**Compensation Petition**

**Negotiator's Notes & Certification**

**Title III Document**

**Mortgage Authorization Form**

**Waiver Valuation**

**IRS Form W-9**

**Letter for Those Refusing to Donate or Accept Compensation**

**Condemnation Letter**

**Certificate of Service & Sheriff's Return Form**

**Eminent Domain – A Brief Overview**

IN THE COUNTY COURT OF \_\_\_\_\_ COUNTY, ARKANSAS  
\_\_\_\_\_ COUNTY, ARKANSAS PLAINTIFF

VS. NO \_\_\_\_\_

THE OWNERS OF THE PROPERTIES  
ACQUIRED HEREIN. DEFENDANTS

**ORDER**

On this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_ by the \_\_\_\_\_ County Court's own initiative, this Order is hereby signed and entered in the records of the \_\_\_\_\_ County Clerk's office for the purpose of effecting changes in whole or in part to State Highway/County Road \_\_\_\_\_ in Section \_\_\_\_\_ of Township \_\_\_\_\_ North/South, Range \_\_\_\_\_ East/West said road being commonly known as \_\_\_\_\_, Arkansas State Highway and Transportation Department Job. No \_\_\_\_\_.

The property is acquired hereby under the County's power of eminent domain is more particularly described in the right of way plans and Centerline Description, which are attached hereto and made a part of this Order.

**THE COURT FINDS** that the public interest and the economical construction, improvements, and maintenance of said road demand that the road be changed in accordance with the construction plans which are attached hereto and made a part of this order. The purpose of this Order is to provide the necessary right of way for the above-mentioned project.

Within ten (10) days after entry of this Order, the Clerk of this Court is hereby ordered to deliver a copy of this Order to the Sheriff of this County, who shall serve a copy of this Order upon each owner of record of the property taken by this Order. Service shall be in the form and manner provided by law for service in civil actions.

**THE COURT FURTHER FINDS**, after being fully advised, and after due consideration of all matters of law and fact:

The proposed changes in the said road are practical, in the best interest of the County and the public, and of sufficient importance to the public to warrant the payment of damages, if any, for the property taken.

**THEREFORE, IT IS CONSIDERED, ORDERED AND ADJUDGED** that:

- a) the changes to said highway, as reflected in the right of way plans attached hereto, shall be and are hereby made;
- b) the improvements to State Highway/County Road No. \_\_\_\_\_ also known as \_\_\_\_\_, shall be located as described in the right of way plans and Centerline Description attached hereto;
- c) a perpetual easement for highway purposes over and across the property described therein is hereby condemned and taken by the County Court of \_\_\_\_\_ County, Arkansas for the use and benefit of the Arkansas State Highway Commission; and,
- d) any landowner aggrieved or damaged by reason of any taking flowing from the changes made hereby, if any, in the route of said highway over the landowner's property, must present a verified claim for damages to this Court within twelve (12) months from the date of service of this Order or be forever barred

**IT IS SO ORDERED.**

\_\_\_\_\_  
COUNTY JUDGE

\_\_\_\_\_  
DATE

CERTIFICATE OF REGISTRATION

STATE OF ARKANSAS

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, Clerk of the County Court within and for the State and County aforesaid do hereby certify that the attached \_\_\_\_\_ pages of typewritten matter of this order is filed in County Court Book \_\_\_\_\_, Page \_\_\_\_\_; and the Right of Way Plan being a part of this order, also is filed in the County Court files and labeled in this office as: \_\_\_\_\_, all of which bears the seal of the County Court of \_\_\_\_\_ County, is a true and correct copy of a certain order made by this County on this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the County Court of \_\_\_\_\_ County on this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
County Clerk

CENTERLINE DESCRIPTION  
 JOB FA4510  
 SEARCY CO. LINE - NORTHWEST (RECONST.) (S)  
 COUNTY ROAD NO. 6  
 MARION COUNTY

Starting at a "Rock near a Fence Corner" being used as the South Sixteenth Corner of Sections 25 and 26; Township 17 North, Range 17 West, Marion County, Arkansas; thence North 11° 44' 09" West a distance of 973.99 feet to a point being designated as Construction Centerline Station 220+00.00 as surveyed by the Arkansas State Highway Commission for point of beginning of Job FA4510 and begin also this Centerline description.

Beginning at the above described point on designated Construction Centerline Station 220+00.00; thence North 47° 46' 11" West along said centerline a distance of 656.58 feet to P.C. Station 226+56.58; thence in a Westerly direction along a 15° 00' 00" curve to the Left a distance of 310.14 feet to P.T. Station 229+66.72; thence South 85° 42' 37" West along said centerline a distance of 404.57 feet to P.C. Station 233+71.29; thence in a Westerly direction along a 13° 15' 00" curve to the Right a distance of 180.44 feet to P.T. Station 235+51.73; thence North 70° 22' 57" West along said centerline a distance of 771.16 feet to P.C. Station 243+22.89; thence in a Northwesterly direction along a 13° 15' 00" curve to the Right a distance of 439.72 feet to P.T. Station 247+62.61; thence North 12° 07' 40" West along said centerline a distance of 404.47 feet to P.C. Station 251+67.08; thence in a Northwesterly direction along an 18° 00' 00" curve to the Left a distance of 371.78 feet to P.T. Station 255+38.86; thence North 79° 02' 19" West along said centerline a distance of 444.84 feet to P.C. Station 256+83.70; thence in a Northwesterly direction along an 18° 00' 00" curve to the Right a distance of 443.96 feet to P.T. Station 264+27.66; thence North 00° 52' 49" East along said centerline a distance of 396.72 feet to P.C. Station 268+24.38; thence in a Northwesterly direction along a 12° 00' 00" curve to the Left a distance of 168.46 feet to P.T. Station 269+92.84; thence North 19° 20' 27" West along said centerline a distance of 516.61 feet to P.C. Station 275+09.45; thence in a Northwesterly direction along an 08° 00' 00" curve to the Right a distance of 198.79 feet to P.T. Station 275+09.45; thence North 03° 26' 17" West along said centerline a distance of 2,036.74 feet to P.C. Station 297+44.98; thence in a Northerly direction along a 10° 00' 00" curve to the Right a distance of 719.20 feet to P.T. Station 304+64.18; thence North 73° 52' 32" East along said centerline a distance of 857.23 feet to P.C. Station 313+21.41; thence in a Northerly direction along a 19° 00' 00" curve to the Left a distance of 488.70 feet to P.T. Station 318+10.11; thence North 18° 58' 37" West along said centerline a distance of 189.89 feet Construction Centerline Station 320+00.00 end of Job FA4510 and end also this Centerline description.

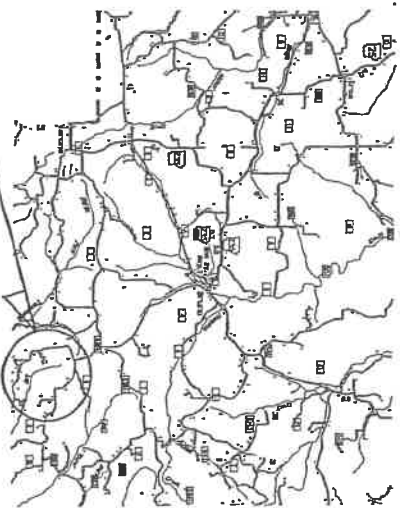
The width of the right of way conveyed to the left and right of the herein above described centerline shall be as follows:

<u>FROM</u> <u>STATION</u>	<u>TO</u> <u>STATION</u>	<u>LIN.</u> <u>FT.</u>	<u>WIDTH</u> <u>LEFT</u>	<u>WIDTH</u> <u>RIGHT</u>	<u>TOTAL</u> <u>WIDTH</u>
220+00.00	241+00.00	2,100	35'	35'	70'
241+00.00	241+50.00	50	35'	Var. 35' - 55'	Var. 70' - 90'

<u>FROM</u> <u>STATION</u>	<u>TO</u> <u>STATION</u>	<u>LIN.</u> <u>FT.</u>	<u>WIDTH</u> <u>LEFT</u>	<u>WIDTH</u> <u>RIGHT</u>	<u>TOTAL</u> <u>WIDTH</u>
241+50.00	242+00.00	50	35'	55'	90'
242+00.00	242+25.00	25	35'	Var. 55' - 35'	Var. 90' - 70'
242+25.00	251+00.00	875	35'	35'	70'
251+00.00	251+25.00	25	Var. 35' - 37.33'	35'	Var. 35' - 72.33
251+25.00	251+50.00	25	Var. 37.33' - 40'	Var. 35' - 40'	Var. 72.33' - 80'
251+50.00	251+75.00	25	Var. 40' - 37.72'	40'	Var. 80' - 77.72
251+75.00	252+00.00	25	Var. 37.72' - 35'	Var. 40' - 35'	Var. 77.72' - 70'
252+00.00	269+00.00	1,700	35'	35'	70'
269+00.00	270+00.00	100	Var. 35' - 40'	35'	Var. 70' - 75'
270+00.00	270+25.00	25	40'	35'	75'
270+25.00	271+00.00	75	40'	Var. 35' - 55'	Var. 75' - 95'
271+00.00	271+50.00	50	Var. 40' - 35'	Var. 55' - 41.67'	Var. 95' - 76.67'
271+50.00	271+75.00	25	35'	Var. 41.67' - 35'	Var. 76.67' - 70'
271+75.00	277+00.00	525	35'	35'	70'
277+00.00	277+50.00	50	35'	Var. 35' - 45'	Var. 70' - 80'
277+50.00	278+00.00	50	35'	45'	80'
278+00.00	278+50.00	50	Var. 35' - 45'	45'	Var. 80' - 90'
278+50.00	279+00.00	50	Var. 45' - 35'	45'	Var. 90' - 80'
279+00.00	282+50.00	350	35'	45'	80'
282+50.00	283+00.00	50	35'	Var. 45' - 35'	Var. 80' - 70'
283+00.00	284+50.00	150	35'	35'	70'
284+50.00	285+00.00	50	Var. 35' - 50'	35'	Var. 70' - 85'
285+00.00	285+50.00	50	Var. 50' - 35'	35'	Var. 85' - 70'
285+50.00	292+50.00	700	35'	35'	70'
292+50.00	293+00.00	50	Var. 35' - 45'	Var. 35' - 55'	Var. 70' - 100'
293+00.00	293+50.00	50	Var. 45' - 35'	Var. 55' - 40'	Var. 100' - 75'
293+50.00	294+00.00	50	35'	40'	75'
294+00.00	294+50.00	50	35'	Var. 40' - 35'	Var. 75' - 70'
294+50.00	297+00.00	250	35'	35'	70'
297+00.00	297+25.00	25	35'	Var. 35' - 40'	Var. 70' - 75'
297+25.00	299+25.00	200	35'	40'	75'
299+25.00	299+50.00	25	Var. 35' - 40'	40'	Var. 75' - 80'
299+50.00	300+25.00	75	40'	Var. 40' - 52.92'	Var. 80' - 92.92'
300+25.00	300+50.00	25	Var. 40' - 35'	Var. 52.92' - 55'	Var. 92.92' - 90'
300+50.00	301+50.00	100	35'	55'	90'
301+50.00	302+00.00	50	Var. 35' - 70'	55'	Var. 90' - 125'
302+00.00	303+50.00	150	70'	55'	125'
303+50.00	304+00.00	50	70'	Var. 55' - 60'	Var. 125' - 130'
304+00.00	304+75.00	75	Var. 70' - 35'	60'	Var. 130' - 95'
304+75.00	306+00.00	125	35'	60'	95'
306+00.00	310+00.00	400	35'	Var. 60' - 35'	Var. 95' - 70'
310+00.00	312+25.00	225	35'	35'	70'
312+25.00	312+50.00	25	35'	Var. 35' - 45'	Var. 70' - 80'
312+50.00	312+75.00	25	35'	Var. 45' - 40'	Var. 80' - 75'
312+75.00	313+25.00	50	35'	40'	75'

ARKANSAS HIGHWAY AND TRANSPORTATION DEPARTMENT  
 RIGHT OF WAY PLANS FOR PROPOSED COUNTY ROAD

SEARCY CO. LINE -  
 NORTHWEST (RECONST.) (S)  
 COUNTY ROAD 6  
 MARION COUNTY  
 FED. AID PROJECT STPR-0045(I)6  
 JOB FA4510

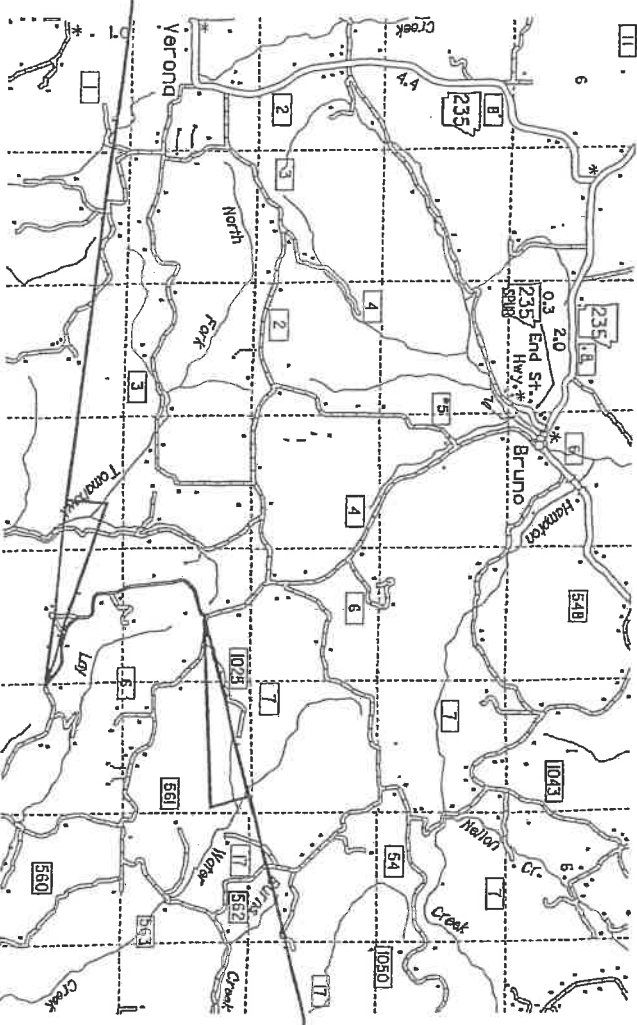


PROJECT LOCATION

SCALE: 1" = 500'



ARKANSAS HIGHWAY DIST. 9

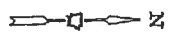


END R/W ACQ. JOB FA4510  
 STA. 320+00.00

DESIGN TRAFFIC DATA  
 DESIGN YEAR.....2030  
 2009 ADT.....75  
 2029 ADT.....105  
 2029 DRY.....105  
 DIRECTIONAL DISTRIBUTION.....0.60  
 TRUCKS.....10%  
 DESIGN SPEED.....30 MPH

	BEGIN	MID-POINT	END
LATITUDE	N36°06'19"	N36°05'44"	N36°06'25"
LONGITUDE	W92°44'52"	W92°45'33"	W92°45'21"

GROSS LENGTH OF PROJECT 1000.00 FEET OR LESS  
 NET LENGTH OF PROJECT 1000.00 FEET OR LESS  
 BRIDGE N/A  
 FLOODING 10000.00  
 1991



DATE	FILE	DATE	FILE	PROJECT NUMBER	SCALE	JOB NO.
				578-0045(I)6		1
				FA4510		2

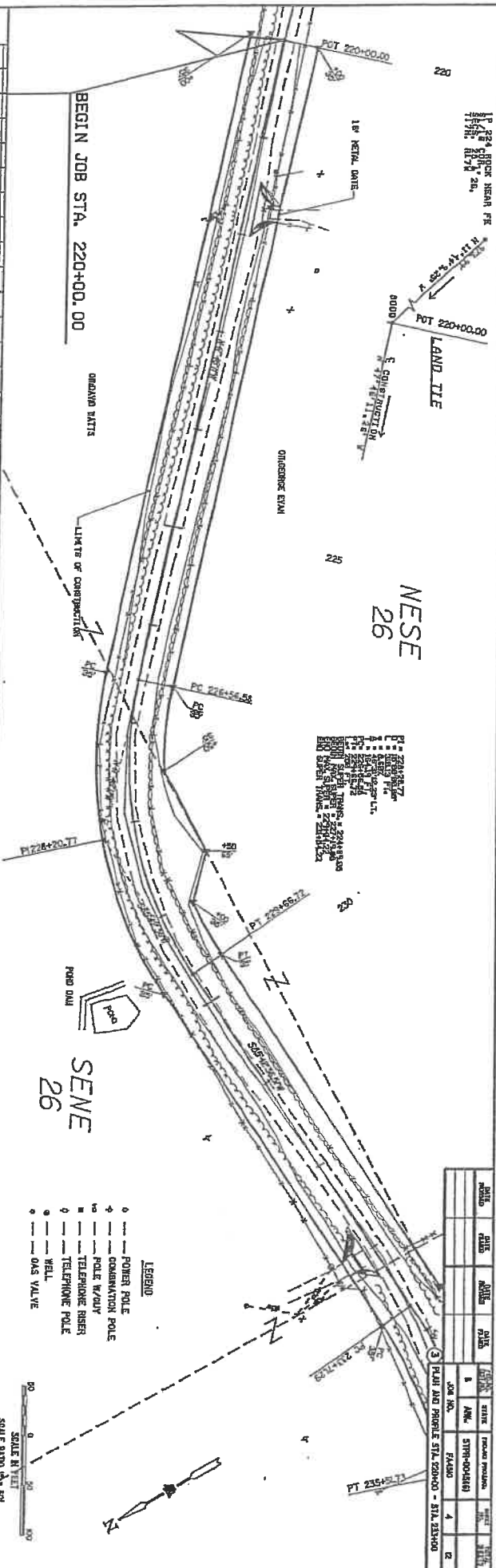
3 SEARCY CO. LINE - NORTHWEST (RECONST.) (S)

P. 234 HORR NEAR PE  
 1/2" = 100' 25'  
 1/8" = 100' 25'

NESE  
 26

SENE  
 26

DATE	BY	CHKD	APPD	SCALE	PROJECT	JOB NO.	DATE
				1/2" = 100'	STP-000000	4	02



- LEGEND**
- POWER POLE
  - GOVERNMENT POLE
  - POLE W/ W/RY
  - TELEPHONE RISER
  - TELEPHONE POLE
  - WELL
  - OAS VALVE

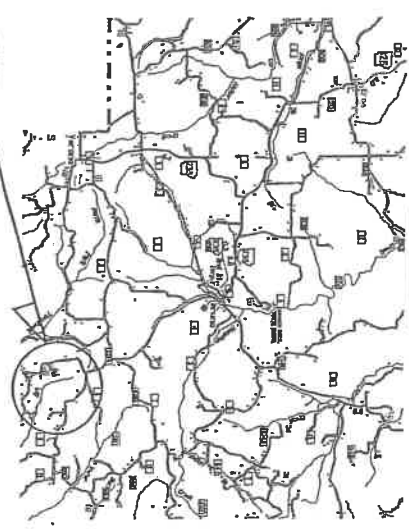


STATION	TYPE	TYPE NO.	DEPTH	DATE	BY	CHKD
220+00	WELL	W-1	11.90	11/90		
220+00	WELL	W-2	11.90	11/90		
220+00	WELL	W-3	11.90	11/90		
220+00	WELL	W-4	11.90	11/90		
220+00	WELL	W-5	11.90	11/90		
220+00	WELL	W-6	11.90	11/90		
220+00	WELL	W-7	11.90	11/90		
220+00	WELL	W-8	11.90	11/90		
220+00	WELL	W-9	11.90	11/90		
220+00	WELL	W-10	11.90	11/90		
220+00	WELL	W-11	11.90	11/90		
220+00	WELL	W-12	11.90	11/90		
220+00	WELL	W-13	11.90	11/90		
220+00	WELL	W-14	11.90	11/90		
220+00	WELL	W-15	11.90	11/90		
220+00	WELL	W-16	11.90	11/90		
220+00	WELL	W-17	11.90	11/90		
220+00	WELL	W-18	11.90	11/90		
220+00	WELL	W-19	11.90	11/90		
220+00	WELL	W-20	11.90	11/90		
220+00	WELL	W-21	11.90	11/90		
220+00	WELL	W-22	11.90	11/90		
220+00	WELL	W-23	11.90	11/90		
220+00	WELL	W-24	11.90	11/90		
220+00	WELL	W-25	11.90	11/90		
220+00	WELL	W-26	11.90	11/90		
220+00	WELL	W-27	11.90	11/90		
220+00	WELL	W-28	11.90	11/90		
220+00	WELL	W-29	11.90	11/90		
220+00	WELL	W-30	11.90	11/90		
220+00	WELL	W-31	11.90	11/90		
220+00	WELL	W-32	11.90	11/90		
220+00	WELL	W-33	11.90	11/90		
220+00	WELL	W-34	11.90	11/90		
220+00	WELL	W-35	11.90	11/90		
220+00	WELL	W-36	11.90	11/90		
220+00	WELL	W-37	11.90	11/90		
220+00	WELL	W-38	11.90	11/90		
220+00	WELL	W-39	11.90	11/90		
220+00	WELL	W-40	11.90	11/90		
220+00	WELL	W-41	11.90	11/90		
220+00	WELL	W-42	11.90	11/90		
220+00	WELL	W-43	11.90	11/90		
220+00	WELL	W-44	11.90	11/90		
220+00	WELL	W-45	11.90	11/90		
220+00	WELL	W-46	11.90	11/90		
220+00	WELL	W-47	11.90	11/90		
220+00	WELL	W-48	11.90	11/90		
220+00	WELL	W-49	11.90	11/90		
220+00	WELL	W-50	11.90	11/90		

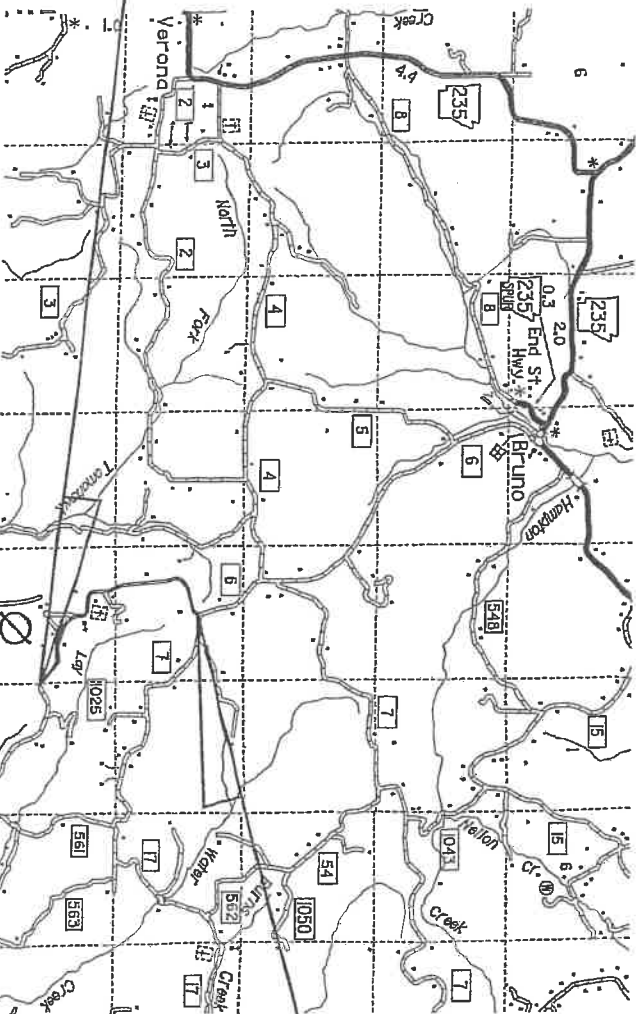


ARKANSAS HIGHWAY AND TRANSPORTATION DEPARTMENT  
 CONSTRUCTION PLANS FOR PROPOSED COUNTY ROAD

SEARCY CO. LINE -  
 NORTHWEST (RECONST.) (S)  
 COUNTY ROAD 6  
 MARION COUNTY  
 FED. AID PROJECT STPR-0045(16)  
 JOB FA4510



PROJECT LOCATION



R 17 W

R 16 W

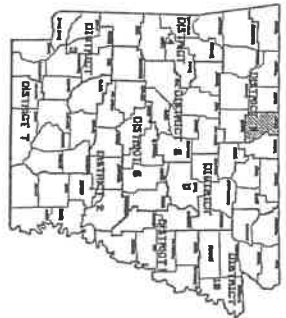


BEGIN	MID-POINT	END	
ELEVATION	136.05' 19"	136.05' 44"	136.06' 25"
LONGITUDE	W 92° 47' 52"	W 92° 45' 33"	W 92° 45' 29"

STA. 220+00.00 BEGIN JOB FA4510  
 FED. AID PROJECT STPR-0045(16)

STA. 320+00.00 END JOB FA4510  
 FED. AID PROJECT BR-0045(16)

DATE	BY	REVISION



ARKANSAS HIGHWAY DIST. 9

DESIGN TRAFFIC DATA  
 DESIGN YEAR..... 2030  
 2011 ADT..... 175  
 2031 ADT..... 105  
 2031 DHT..... 12  
 DIRECTIONAL DISTRIBUTION..... 0.60  
 TRUCKS..... 10%  
 DESIGN SPEED..... 30 MPH

PRELIMINARY  
 SUBJECT TO REVISION  
 DEPUTY DIRECTOR  
 AND CHIEF ENGINEER



APPROVED



IN THE MATTER OF THE PETITION  
OF THE ARKANSAS STATE HIGHWAY  
COMMISSION FOR CHANGES TO \_\_\_\_\_

BE IT KNOWN BY THESE PRESENTS THAT we, the undersigned, with full knowledge and understanding, do hereby acknowledge by appropriate signature that we own certain properties within \_\_\_\_\_ County, which are abutting County Road No. \_\_\_\_\_ and further, of our free will, agree to donate, having been explained our rights to just compensation if any, the lands required for right-of-way for County Road No. \_\_\_\_\_ reflected by Arkansas State Highway Department Plans for the above subject project, which have been made available for my inspection.

**OWNER:**

_____	X
Printed Name	Signature
_____ (spouse)	X
Printed Name	Signature
_____	X
Printed Name	Signature
_____ (spouse)	X
Printed Name	Signature
_____	X
Printed Name	Signature
_____ (spouse)	X
Printed Name	Signature
_____	X
Printed Name	Signature

This is to certify that I, \_\_\_\_\_ Judge of \_\_\_\_\_  
County, Arkansas have contacted all property owners involved on the above subject project and  
these owners agreed to donate the land required/or have received just compensation for right-of-  
way of said highway.

I further certify that the above is in compliance with Title III, Section 301 of Public Law  
91-646 commonly known as the "Uniform Relocation Assistance and Real Property Acquisition  
Act of 1970" and Federal Aid Highway Amendments of 1974.

\_\_\_\_\_  
Judge  
\_\_\_\_\_  
Date

CERTIFICATE OF REGISTRATION

STATE OF ARKANSAS  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, Clerk of the County Court within  
and for the State and County aforesaid do hereby certify that the attached \_\_\_\_\_ page(s)  
of which bears the seal of the County Court of \_\_\_\_\_ County is a true and  
correct copy and filed in this Court on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. The  
same appears of record in County Court Record Book \_\_\_\_\_ at Page \_\_\_\_\_

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the SEAL of the  
County Court of \_\_\_\_\_ County on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
County Clerk

IN THE MATTER OF THE PETITION  
OF THE ARKANSAS STATE HIGHWAY  
COMMISSION FOR CHANGES TO \_\_\_\_\_

BE IT KNOWN BY THESE PRESENTS THAT we, the undersigned, with full knowledge and understanding, do hereby acknowledge by appropriate signature they own certain properties within \_\_\_\_\_ County, Arkansas, which is abutting County Road No. \_\_\_\_\_ and further, of our free will, having been explained our rights to compensation if any, agree to accept payment for the estimated just compensation for the lands required for right of way for County Road No. \_\_\_\_\_ as is reflected by Arkansas State Highway Department Plans for the above subject project, which have been made available for my inspection.

The total compensation required for right of way for County Road No. \_\_\_\_\_ as is reflected by the Arkansas State Highway Department Plans mentioned above shall not exceed \$ \_\_\_\_\_ The aforementioned compensation shall be no less than \$ \_\_\_\_\_ to be paid by \_\_\_\_\_ County to the party of \_\_\_\_\_.

Owner :

Signature:

\_\_\_\_\_  
\_\_\_\_\_

This is to certify that I, \_\_\_\_\_ Judge of \_\_\_\_\_ County, Arkansas have contacted the property owners involved on the above subject project and these owners agreed to donate the land required/or have received just compensation for right-of-way of said highway.

I further certify that the above is in compliance with Title III, Section 301 of Public Law 91-646 commonly known as the "Uniform Relocation Assistance and Real Property Acquisition Act of 1970" and Federal Aid Highway Amendments of 1974.

\_\_\_\_\_  
Judge

\_\_\_\_\_  
Date

# AUTHORIZATION FORM

Form must be filled out completely, signed and turned into Administrative immediately following first contact.

Job # _____	Tract # _____
Property Owner: _____	
Address: _____ _____	
Telephone # _____	
Social Security # _____	

Mortgage Company: _____
Address: _____ _____
Telephone # _____
Loan # _____
Contact Person: _____

Due to the construction of the above-mentioned project we are acquiring property from your mortgagor. It will be necessary to obtain a Partial Release from your company. The mortgagor is aware that some or all the proceeds from this transaction may be required to be applied to the principle balance of the mortgage. The mortgagor is also aware that we will be negotiating only with the mortgagor and that any checks for funds conveyed will be made to the property owner.

**If no mortgage, write "NONE". Must be signed by owner even if no mortgage.**

By our signatures we are authorizing the Arkansas State Highway & Transportation Department to enter into the process necessary to obtain a Partial Release.

Mortgagor's Signature \_\_\_\_\_ Date \_\_\_\_\_  
\_\_\_\_\_ Date \_\_\_\_\_

GRANTOR'S NAME:

\_\_\_\_\_  
 FIRST MIDDLE LAST MARITAL STATUS

\_\_\_\_\_  
 ROUTE-BOX-STREET CITY STATE ZIP PHONE #

\_\_\_\_\_  
 FIRST MIDDLE LAST MARITAL STATUS

\_\_\_\_\_  
 ROUTE-BOX-STREET CITY STATE ZIP PHONE #

MORTGAGEE: \_\_\_\_\_

Person Contacted \_\_\_\_\_ Place of Contact \_\_\_\_\_

Date contract and first offer letter delivered \_\_\_\_\_

ARE THEY RETAINING SIGN? YES: \_\_\_\_\_ NO: \_\_\_\_\_

- |   |     |    |  |     |    |
|---|-----|----|--|-----|----|
| 1. Ownership information correct?                   | Yes | No | 4. Is there a lease?                       | Yes | No |
| 2. Have you sold any part of property in past year? | Yes | No | 5. Can this be closed by mail?             | Yes | No |
| 3. Is there a contract buyer?                       | Yes | No | 6. Offered to purchase uneconomic remnant? | Yes | No |
|   |     |    | 7. Purchased uneconomic remnant?           | Yes | No |

**SIGNATURES**

- \_\_\_\_\_ Joint ownership -owner & spouse
- \_\_\_\_\_ Individual ownership - owner & spouse If deceased - spouse, children & spouses Or if probate is pending and not closed - Take contract to owner's attorney for petition and court approval to AHC
- \_\_\_\_\_ Life estate holder(s) and spouses
- \_\_\_\_\_ Remaindermen (of life estate) and spouses
- \_\_\_\_\_ Guardianship (Minor or incompetent) - Take contract to land owner's attorney for petition and court approval
- \_\_\_\_\_ Divorced owners - (refer to divorce decree or/and property settlement (if exists) for exact owners of subject tract) - get new spouses signature, also.
- \_\_\_\_\_ General Partnership - ALL partner's signatures
- \_\_\_\_\_ Limited Partnership - managing partner's signature
- \_\_\_\_\_ Corporation - 2 officers signatures
- \_\_\_\_\_ Trustees - number as set out in by-laws (i.e. charters, lodges)
- \_\_\_\_\_ City - Mayor or city clerk/ Bankruptcy Chapt. \_\_\_\_\_ Chapt. 11 \_\_\_\_\_ Chapt. 12 \_\_\_\_\_ Chapt. 13 \_\_\_\_\_
- \_\_\_\_\_ County - County Judge and County Clerk (\$500.00 & under)
- \_\_\_\_\_ Power of Attorney - Need Signature of Land Owner(s) by their Attny.-infact and signature of attny.-in Fact.

**DOCUMENTS OR/AND INFORMATION**

Partnership Agreement, Trust Agreement, Corporate Resolution, Board Resolution, Mortgagee Info-Name and address of Mtgee. And Loan No., Death certificate (if available) or death dates of ALL record owners, City Ordinance or/and Minutes of City Council meeting, County Court Order (over \$500.00).

\_\_\_\_\_  
 Negotiator

JOB: \_\_\_\_\_ TRACT: \_\_\_\_\_ DATE \_\_\_\_\_ FAP \_\_\_\_\_

NEGOTIATOR'S CERTIFICATION

JOB  
OWNER  
TRACT

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

THIS IS TO CERTIFY THAT:

It is understood that this parcel is secured for use in connection with a Federal-Aid Highway project.

The written agreement secured for the purpose of this tract embodies all of the considerations agreed upon between the negotiator and the property owner.

The agreement was reached without promises other than those shown in the agreement and that no coercion was used or threats of any kind were made to secure this agreement.

I have no direct or indirect, present or contemplated future personal interest in this tract and will derive no benefit from the acquisition of this property.

\_\_\_\_\_  
Negotiator

\_\_\_\_\_  
Date





**TITLE III - UNIFORM REAL PROPERTY ACQUISITION POLICY**  
Uniform Policy on Real Property Acquisition Practices

Section 301. In order to encourage and expedite the acquisition of real property by agreements with owners, to avoid litigation and relieve congestion in the courts, to assure consistent treatment for owners in the many Federal programs, and to promote public confidence in Federal land acquisition practices, heads of Federal agencies shall, to the greatest extent practicable, be guided by the following policies:

- (1) The head of a Federal agency shall make every reasonable effort to acquire expeditiously real property by negotiation.
- (2) Real property shall be appraised before the initiation of negotiation, and the owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property.
- (3) Before the initiation of negotiations for real property, the head of the Federal agency concerned shall establish an amount which he believes to be just compensation therefore and shall make a prompt offer to acquire the property for the full amount so established. In no event shall such amount be less than the agency's approved appraisal of the fair market value of such property. Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, will be disregarded in determining the compensation for the property. The head of the Federal agency concerned shall provide the owner of real property to be acquired with a written statement of, and summary of the basis for, the amount he established as just compensation. Where appropriate the just compensation for the real property acquired and for damages to remaining real property shall be separately stated.
- (4) No owner shall be required to surrender possession of real property before the head of the Federal agency concerned pays the agreed purchase price, or deposits with the court in accordance with section 1 of the Act of February 26, 1931 (46 Stat. 1421; 40 U.S.C. 258a), for the benefit of the owner, an amount not less than the agency's approved appraisal of the fair market value of such property, or the amount of the award of compensation in the condemnation proceeding for such property.
- (5) The construction or development of a public improvement shall be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling (assuming a replacement dwelling as required by title II will be available), or to move his business or farm operation, without at least ninety days' written notice from the head of the Federal agency concerned, of the date by which such move is required.
- (6) If the head of a Federal agency permits an owner or tenant to occupy the real property acquired on a rental basis for a short term or for a period subject to termination by the Government on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.
- (7) In no event shall the head of a Federal agency either advance the time of condemnation, or defer negotiations or condemnation and the deposit of funds in court for the use of the owner, or take any other action coercive in nature, in order to compel an agreement on the price to be paid for the property.
- (8) If any interest in real property is to be acquired by exercise of the power of eminent domain, the head of the Federal agency concerned shall institute formal condemnation proceedings. No Federal agency head shall intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property.
- (9) If the acquisition of only part of a property would leave its owner with an uneconomic remnant, the head of the Federal agency concerned shall offer to acquire the entire property.

**Donations**

**Section 112 (Federal Aid Highway Amendments of 1974)**

"Nothing in this title, or in any other provision of law, shall be construed to prevent a person whose real property is being acquired in connection with a project under this title, after he has been fully informed of his right to receive just compensation for the acquisition of his property, from making a gift or donation of such property, or any part thereof, or of any of the compensation paid therefore, to a Federal agency, a State or a State agency, or a political subdivision of a State, as said person shall determine."

WAIVER VALUATION

Job Number:  
Location:

County:

Tract:

Fee Owner:  
Address:  
Telephone:

Area Of The Whole:  
Area Of Remainder:  
Area Of Acquisition:

Permanent Easement(s):  
Temporary Easement(s):

ACQUISITION COMPENSATION:

Fee Title:	\$
Temporary Easement(S):	\$
Permanent Easement(S):	\$
Value Of Improvements Acquired:	\$
Cost To Cure Items:	\$
Damage To Remaining Property:	\$

Subtotal: \$

SIGNS: \$

Total Just Compensation As Of: \$

CERTIFICATION

I, your name here, hereby certify that in the preparation of this Valuation I have personally inspected this property; that I have no present or contemplated future interest therein; that compensation to me for this estimate is not contingent upon my value conclusions herein set forth; and that all statements herein are true to the best of my knowledge and belief.

PREPARED BY \_\_\_\_\_

Date: \_\_\_\_\_

Job:

Tract:

Highest & Best Use:

Location Of Property:

Frontage:

Depth:

Topography:

Utilities:

Basis For Land Value:

COMMENTS:

Job:

Tract:

**Request for Taxpayer  
 Identification Number and Certification**

Give Form to the  
 requester. Do not  
 send to the IRS.

**Name** (as shown on your income tax return)

**Business name** (disregarded entity name, if different from above)

Check appropriate box for federal tax classification (required):  Individual/sole proprietor  C Corporation  S Corporation  Partnership  Trust/estate

Limited liability company. Enter the tax classification [C-C corporation, S-S corporation, P-partnership]

Other (see instructions)

Exempt payee

**Address** (number, street, and apt. or suite no.)

**City, state, and ZIP code**

**List account number(s) here** (optional)

**Requester's name and address** (optional)

**Part I Taxpayer Identification Number (TIN)**

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I Instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

**Social security number**

		-			-				
--	--	---	--	--	---	--	--	--	--

**Employer identification number**

		-							
--	--	---	--	--	--	--	--	--	--

**Note.** If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

**Part II Certification**

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. citizen or other U.S. person (defined below).

**Certification instructions.** You must press out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign this certification, but you must provide your correct TIN. See the instructions on page 4.

**Sign Here** Signature of U.S. person

Date

**General Instructions**

Section references are to the Internal Revenue Code unless otherwise noted.

**Purpose of Form**

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien); to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify that the TIN you are giving is correct for you are waiting for a number to be issued).
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your excess share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

**Note.** If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7704-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

Letter For Those Refusing to Donate/Accept Compensation

"FOR OWNERS WHOSE SIGNATURE DOES NOT  
APPEAR ON THE DONATION FORM"

COUNTY LETTERHEAD  
(DATE)

Division Head  
Right of Way Division  
Arkansas State Highway and Transportation Department  
P.O. Box 2261  
Little Rock, Arkansas 72203

Subject of Job

Dear

I hereby certify that the following property owner's property affected by subject project has been offered just compensation for the right of way and improvements necessary from his ownership and that the above is in compliance with Title III, Section 301 of Public Law 91-646 commonly known as the "Uniform Relocation Assistance and Real Property Acquisition Act of 1970".

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
County Judge

COUNTY LETTERHEAD

(DATE)

Owner

Job

Dear Property Owner(s):

Whereas, the Arkansas State Highway and Transportation Department has agreed to construct Job No. \_\_\_\_\_ known as \_\_\_\_\_ . The provision of this consideration is that the County must furnish the right of way for this project.

On \_\_\_\_\_, \_\_\_\_\_ County filed an Order securing the right of way needed for this project.

Under the provisions of Title III, Section 301 of Public Law 91-646 commonly known as the "Uniform Relocation Assistance and Real Property Acquisition Act of 1970", you are entitled to just compensation.

In my opinion, the improvement that will be made by the above stated project will benefit your property; I am thereby stating that the benefits to your property combined with \$ \_\_\_\_\_ for right of way easement and \$ \_\_\_\_\_ for damages, is just compensation for you.

If you do not elect to accept the estimated just compensation, then you will be entitled to a hearing in the County Court of \_\_\_\_\_ County in which your lands are situated to determine just compensation for your lands condemned. You have within one year from this date to present your claim or be forever barred.

Yours truly,

Honorable \_\_\_\_\_ County Judge

CERTIFICATE OF SERVICE  
AND  
SHERIFF'S RETURN FORM

STATE OF ARKANSAS )

IN THE MATTER OF JOB NO \_\_\_\_\_

COUNTY OF \_\_\_\_\_ )

COUNTY ROAD \_\_\_\_\_

I have duly served the within writ by delivering a copy, and stating the substance thereof to the within named.

1. \_\_\_\_\_

6. \_\_\_\_\_

2. \_\_\_\_\_

7. \_\_\_\_\_

3. \_\_\_\_\_

8. \_\_\_\_\_

4. \_\_\_\_\_

9. \_\_\_\_\_

5. \_\_\_\_\_

10. \_\_\_\_\_

\_\_\_\_\_  
SHERIFF

\_\_\_\_\_  
County, Arkansas

CERTIFICATE OF REGISTRATION

STATE OF ARKANSAS

\_\_\_\_\_ COUNTY

I, \_\_\_\_\_, Clerk of the County Court within and for the State and County aforesaid do hereby certify that the attached \_\_\_\_\_ page (s) of typewritten matter, of which bears the seal of the County Court of \_\_\_\_\_ County, is a true and correct copy of the Sheriff's Return made and filed in this Court on the \_\_\_\_\_ day of \_\_\_\_\_, 2005. The same appears of record in County Court Record Book \_\_\_\_\_ at Page \_\_\_\_\_.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the SEAL of the County Court of \_\_\_\_\_ County on the \_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
COUNTY CLERK





# Eminent Domain

## A Brief Overview

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IN THE COUNTY COURT OF \_\_\_\_\_ COUNTY, ARKANSAS  
\_\_\_\_\_ COUNTY, ARKANSAS  
PLAINTIFF

VS. NO \_\_\_\_\_

THE OWNERS OF THE PROPERTIES  
ACQUIRED HEREIN.  
DEFENDANTS

ORDER

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by the \_\_\_\_\_ County Court's own initiative, this Order is hereby signed and entered in the records of the \_\_\_\_\_ County Clerk's office for the purpose of effecting changes in whole or in part to State Highway/County Road No. ?? in Section(s) \_\_\_\_\_ of Township\_\_ North/South, Range \_\_\_\_\_ East/West said road being commonly known as \_\_\_\_\_, Arkansas State Highway and Transportation Department Job No. \_\_\_\_\_.

2 The property is acquired hereby under the County's power of eminent domain is more particularly described in the right of way plans and Centerline Description, which are attached hereto and made a part of this Order.

3 THE COURT FINDS that the public interest and the economical construction, improvements, and maintenance of said road demand that the road be changed in accordance with the construction plans which are attached hereto and made a part of this order. The purpose of this Order is to provide the necessary right of way for the above-mentioned project.

Within ten (10) days after entry of this Order, the Clerk of this Court is hereby ordered to deliver a copy of this Order to the Sheriff of this County, who shall serve a copy of this Order

upon each owner of record of the property taken by this Order. Law for service in civil actions shall in the form and manner provide Service.

**THE COURT FURTHER FINDS**, after being fully advised, and after due consideration of all matters of law and fact:

5

The proposed changes in the said road are practical, in the best interest of the County and the public, and of sufficient importance to the public to warrant the payment of damages, if any, for the property taken.

**THEREFORE, IT IS CONSIDERED, ORDERED AND ADJUDGED** that:

- a) The changes to said highway, as reflected in the right of way plans attached hereto, shall be and are hereby made;
- b) The improvements to State Highway/County Road No. \_\_\_\_\_ also known as \_\_\_\_\_, shall be located as described in the right of way plans and Centerline Description attached hereto;
- c) A perpetual easement for highway purposes over and across the property described therein is hereby condemned and taken by the County Court of \_\_\_\_\_ name \_\_\_\_\_ County, Arkansas for the use and benefit of the Arkansas State Highway Commission; and,
- d) Any landowner aggrieved or damaged by reason of any taking flowing from the changes made hereby, if any, in the route of said highway over the landowner's property, must present a verified claim for damages to this Court within twelve (12) months from the date of service of this Order or be forever barred.

6

**IT IS SO ORDERED.**

\_\_\_\_\_  
COUNTY JUDGE

\_\_\_\_\_  
DATE

2

## Condemnation Instructions

Once Court Order is filed:

- 1) Within 10 days from the date the Court Order is filed, the County Sheriff will deliver a copy to each owner whose property was condemned along with a condemnation letter.
- 2) Once the Orders and condemnation letters are delivered; the County Sheriff will sign the Certificate of Service, and ask the County Clerk to file it with the Court Order. Mail a copy of the signed and filed Certificate to AHTD.

Property owners have 12 months from the date of service of the Court Order to file a claim for damages in County Court.



IN THE MATTER OF THE PETITION  
OF THE ARKANSAS STATE HIGHWAY  
COMMISSION FOR CHANGES TO (job number)

BE IT KNOWN BY THESE PRESENTS THAT I/We, the undersigned, with full knowledge and understanding, do hereby acknowledge by appropriate signature I/We own certain properties within                      County, Arkansas, which is abutting Hwy # / County Road No. and further, of our free will, having been explained our rights to compensation if any, agree to donate the lands required for right of way for Hwy # / County Road No. as is reflected by Arkansas State Highway Department Plans for the above subject project, which have been made available for my inspection.

IN ACCORDANCE with Public Law 91-646, Uniform Relocation Assistance and Real Property Acquisition Policies Act, the Grantor has the right to receive just compensation for the subject property. Also, the Grantor is entitled to an appraisal of the subject property. Execution of this agreement will release                      County, Arkansas from the obligation of providing just compensation and an appraisal on this                      day of                     , 2013.

Owner :

Signature:

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

This is to certify that I, \_\_\_\_\_ Judge of \_\_\_\_\_ County, Arkansas have contacted the property owners involved and these owners agreed to donate the land required for right-of-way of said highway.

I further certify that the above is in compliance with Title III, Section 301 of Public Law 91-646 commonly known as the "Uniform Relocation Assistance and Real Property Acquisition Act of 1970", as amended and applicable FHWA and AHTD guidelines.

\_\_\_\_\_  
Judge

\_\_\_\_\_  
Date

COUNTY LETTERHEAD  
(DATE)

Owner

Job

Dear Property Owner(s):

Whereas, the Arkansas State Highway and Transportation Department has agreed to construct Job No. \_\_\_\_\_ known as \_\_\_\_\_. The provision of this consideration is that the County must furnish the right of way for this project.

On \_\_\_\_\_, \_\_\_\_\_ County filed an Order securing the right of way needed for this project.

Under the provisions of Title III, Section 301 of Public Law 91-646 commonly known as the "Uniform Relocation Assistance and Real Property Acquisition Act of 1970", you are entitled to just compensation.

In my opinion, the improvement that will be made by the above stated project will benefit your property; I am thereby stating that the benefits to your property combined with \$\_\_\_\_\_ for right of way easement and \$\_\_\_\_\_ for damages, is just compensation for you.

If you do not elect to accept the estimated just compensation, then you will be entitled to a hearing in the County Court of \_\_\_\_\_ County in which your lands are situated to determine just compensation for your lands condemned. You have within one year from this date to present your claim or be forever barred.

Yours truly,

Honorable \_\_\_\_\_ County Judge



## BASIC ACQUISITION REQUIREMENTS

The following is a list of the basic acquisition requirements for agencies receiving Federal financial assistance.

1. Personally contact each real property owner or the owner's designated representative in order to explain the acquisition process to the property owner, including the right to accompany the appraiser during inspection of the property, and provide the owner with a written notice of the agencies intent to acquire.
2. Provide the owner with a written offer of the approved estimate of just compensation for the real property to be acquired and a summary statement of the basis for the offer.
3. Give the property owner an opportunity to consider the offer.
4. Conduct negotiations without any attempt to coerce the property owner into reaching an agreement.
5. Provide at least 90 days written notice of the date by which the move is required.
6. Pay the agreed purchase price before requiring the property owner to surrender possession of the property being acquired.

[http://www.fhwa.dot.gov/real\\_estate/practitioners/uniform\\_act/program\\_administration/lpa\\_guide/reag.pdf](http://www.fhwa.dot.gov/real_estate/practitioners/uniform_act/program_administration/lpa_guide/reag.pdf)