



**THE ATTORNEY GENERAL  
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON  
ATTORNEY GENERAL**

March 21, 1958

Honorable W.W. Kilgore  
County Attorney  
Victoria County  
Victoria, Texas

Opinion No. WW-391

Re: Authority of the  
county to condemn  
a right of way ease-  
ment over a railroad  
right of way consisting  
of four or more tracks.

Dear Mr. Kilgore:

In a recent request for an opinion of this office, you ask whether Victoria County, under Articles 1149 and 1150, Vernon's Civil Statutes, is authorized

"to condemn an easement over a railroad right of way connecting two streets, which proposed crossing would cross four tracks and an additional track or spur which goes to a loading ramp, being five tracks in all, in a community or unincorporated town or city".

Articles 1149 and 1150 of Vernon's are Articles 1149 and 1150 of the Revised Civil Statutes of Texas, 1925. They read:

"Art. 1149. Condemnation for highways.  
--Any town or village in this State, incorporated under this chapter or by special charter, shall have the right, and they are hereby empowered, to condemn the right of way and roadbed of any railroad company whose roadbed runs within the corporate limits of such town or village, when deemed necessary and so declared, by a majority vote of the board of aldermen, for the purpose of opening, widening or extending the streets of such town or village; provided, there are less than four railroad tracks. Failing to agree on the damages

to be paid therefor, the mayor shall prepare a statement in writing showing the point on said railroad right of way where said street is desired to be opened, widened or extended, giving the width and length of that portion of the right of way of the railroad sought to be condemned, and describing it so that it can be clearly identified, the object for which it is sought to be condemned, the name and style of the railroad company, and file the same with the county judge of the county in which such town or village is situated, whereupon proceedings shall be had to condemn said right of way. (Acts 1897, p. 216; G.L. Vol. 10, p. 1270)."  
(Emphasis added.)

"Art. 1150. Commissioners court may condemn.--County commissioners shall have the right, upon petition of twenty freeholders of any community, or unincorporated town or city, to condemn roadbed of railroads for the same purpose mentioned in the preceding article."

Articles 1149 and 1150 were originally passed by the Legislature as one act--Acts 1897, 25th Legislature, page 216, chapter 151. It is therefore proper when interpreting Articles 1149 and 1150 to look to this original act and likewise to consider said Articles to be in para materia. 39 Tex.Jur. page 263, Stats. § 139; 39 Tex.Jur. page 253, Stata. § 135. When this is done we see that the primary objective of the original enactment was to enable towns, villages and population centers to remove obstructions caused by railroads to public streets in their respective areas through the medium of eminent domain. However, a qualification was placed upon the method of achieving this primary objective, condemnation was authorized over no more than three railroad tracks. Article 1149 and 1150 carried into codification the purpose and methods of the original act. From an historical view it becomes obvious that the Legislature in enacting Article 1150 intended to confer to unincorporated towns or communities in the county only such condemnation powers as were conferred to incorporated towns and villages by Article 1149, i.e., the right to condemn a railroad right of way consisting of less than four railroad tracks. It would indeed be illogical to assume that the Legislature by this enactment intended to grant to unincorporated communities greater condemnation powers than it granted to the more densely populated incorporated communities in the county. Clearly the restriction on the number of tracks that may be condemned under Article 1149 applies to Article 1150.

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This office, in Attorney General's Opinion No. 0-5352, 1943, has held that Articles 1149 and 1150 grant to the county commissioners court the power to condemn railroad rights of way over no more than three tracks. We believe that opinion to be correct in this respect. Therefore we inform you that Victoria County does not have authority under Articles 1149 and 1150 to condemn an easement in an unincorporated community over a railroad right of way to connect two streets which proposed crossing would cross four tracks and an additional spur track making five tracks in all.

SUMMARY

Articles 1149 and 1150 do not authorize the County Commissioners Court of Victoria County to condemn a right of way across a railroad right of way consisting of five railroad tracks.

Yours very truly,

WILL WILSON  
Attorney General of Texas

By   
Milton Richardson  
Assistant Attorney General

MR:dhs:bh

APPROVED:

OPINION COMMITTEE  
Geo. P. Blackburn, Chairman

Cecil C. Rotsch

Mark McLaughlin

John H. Minton, Jr.

REVIEWED FOR THE ATTORNEY  
GENERAL BY:

W.V. Geppert