



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

March 14, 1961

Honorable G. F. Steger
County Attorney
Colorado County
Columbus, Texas

Opinion No. WW-1017

Re: Whether property already appropriated to one public use can be taken under eminent domain laws for another public use in the absence of a showing that the purpose of the taking can be accomplished in no other practical manner.

Dear Mr. Steger:

You state in your opinion request that Colorado County is contemplating the condemnation of a lengthwise portion of railroad spur right of way located in an unpopulated area of the county for the purpose of building a county road. As we understand the facts the county seeks to acquire that portion of railroad right of way from the intersection of the tracks and Farm-to-Market Road No. 950 in a southerly direction for almost a distance of one-half mile.

Prior to the consideration of condemnation the county offered to purchase the needed right of way from the railway company, which is not presently in use by the railroad. Subsequently, the company declined to sell stating that such segment of the railroad would be needed in the future.

In your opinion request your conclusion is that the right of way ". . . has not been abandoned . . ." and you have asked the following question:

"Can property already appropriated to one public use be taken under applicable laws of eminent domain for another public use in the absence of a showing that the purpose of the taking can be accomplished in no other practical manner?"

It is stated in Snellen v. Brazoria County, 224 S.W.2d 305 (Civ. App., 1949, error ref. n.r.e.) that:

". . . as a general rule, property appropriated to the public purpose cannot be taken for another public use without express or implied legislative authority when such taking results in practical destruction of the prior use unless the subsequent taking is for a public purpose of greater or paramount importance which cannot be accomplished in any other practical way." (Emphasis added)

This rule was originally stated in Sabine & E. T. Ry. Co. v. Gulf & I. Ry. Co. of Texas, 92 Tex. 162, 46 S.W. 784 (1898).

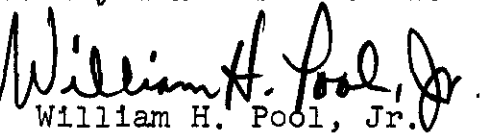
There is no applicable statute conferring the specific authority needed by the county to condemn the desired portion of railroad right of way. In the absence of such authority, to sustain a subsequent taking under a general power, there must be a showing of paramount importance or purpose and that the power can be exercised in no other practical way. We accordingly answer your question in the negative.

S U M M A R Y

In absence of legislative authority, property appropriated to a public purpose cannot be taken for another public use when such taking will destroy or materially impair the prior use unless the subsequent taking is for a paramount public importance which cannot be accomplished in any other practical way.

Yours very truly,

WILL WILSON
Attorney General of Texas

By 
William H. Pool, Jr.
Assistant

WHPjr:mmm

APPROVED:

OPINION COMMITTEE
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REVEIUED FOR THE ATTORNEY GENERAL
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