

Opinion No. 260.

**Highways—Speed on Highways of  
Unincorporated Towns—County  
Commissioners—Unincorporated Cities  
and Towns—Cities and Towns,  
Unincorporated, Highways.**

Held: If streets of unincorporated towns or villages in Montana, not a part of an arterial highway, are public highways, under the provisions of Section 1612, Revised Codes of Montana, 1935, they are subject to the speed restrictions set forth in Chapter 199, Laws of 1943.

December 1, 1944.

Mr. M. L. Parcels  
County Attorney  
Stillwater County  
Columbia, Montana

Dear Mr. Parcels:

You have requested an opinion of this office relative to whether there is any maximum speed limit on streets of unincorporated towns and villages within the state of Montana which

are not used as an arterial highway through such town or village, and the further question of whether under the provisions of Section 7 of Chapter 199, Laws of 1943, the supervisor of the highway patrol or the county commissioners have authority to provide the speed limits on such streets.

In answer to your first inquiry I wish to inform you that there is no general maximum speed limit on public highways, but Section 7 of Chapter 199, Laws of 1943, requires motorists on public highways of this state to drive at no greater a speed than is reasonable and prudent to conditions then existing and also sets a limit on the speed of trucks and on driving during the hours when lights on vehicles are required.

Whether this provision applies to streets in unincorporated towns depends upon whether such streets are considered public highways. Section 1612, Revised Codes of Montana, 1935, defines public highways as follows:

"All highways, roads, lanes, streets, alleys, courts, places, and bridges laid out or erected by the public, or now traveled or used by the public, or if laid out or erected by others, dedicated or abandoned to the public, or made such by the partition of real property, are public highways."

Roads and Streets, by Elliott, Volume I, Third Edition, on page 4 states:

"If a way is one over which the public have a general right of passage, it is, in legal contemplation, a highway . . . and whether it be situated in a town or in the country."

The Washington Court in the case of *Murphy v. King County, et al.*, 88 Pac. 1115, held that streets of an unincorporated town came within the meaning of public highways.

Thus, if these streets of the unincorporated towns which you have in mind were in use prior to 1895, the date of the enactment of Section 1612, Revised Codes of Montana, 1935, or have since been duly laid out or erected by the public, or dedicated or abandoned to the public or made such by the partition of real property, they are public highways and come within the provisions of said Section 7, Laws of 1943.

Your second inquiry is partially answered by the reasoning in the answer

to your first inquiry in that in the fifth paragraph of Section 7 of Chapter 199, Laws of 1943, it is provided that the supervisor of the highway patrol is authorized and empowered to determine and establish on any public highway of the state of Montana, or any portion thereof, limited speed zones.

Thus, upon the determination that any and all streets which were in use prior to 1895, or have since been laid out or erected by the public or dedicated or abandoned to the public, or made such by the partition of real property, are public highways, then such streets, as you have in mind may be controlled by the said supervisor in the event the particular facts in each instance prove them to come within the definition of a public highway under the provisions of Section 1612, Revised Codes of Montana, 1935. In accordance with Section 7 of Chapter 199, the county commissioners may, if the said supervisor of the highway patrol has not acted, provide restrictions of speed on such streets. Also from a reading of Section 7 of said Chapter 199, it is to be noted that if the street is not a public highway within the provisions of Section 1612, Revised Codes of Montana, 1935, the county commissioners would have exclusive control.

Therefore, it is my opinion that the streets of an unincorporated town or village in Montana, not a part of an arterial highway, are public highways under the provisions of Section 1612, Revised Codes of Montana, 1935, they are subject to the speed restrictions as set forth in Section 7, Chapter 199, Laws of 1943, and the supervisor of the highway patrol may regulate the same if he sees fit under the provisions of Section 7. If the supervisor does not so act, the county commissioners of the county wherein such streets are located may so regulate under the authority given them in Section 7 of Chapter 199. If the streets do not come within the provisions of Section 1612, then the county commissioners of the county wherein such streets are located would have exclusive and sole jurisdiction under the powers of Section 7 of Chapter 199.

Sincerely yours,  
R. V. BOTTOMLY  
Attorney General