

Public Highways, Prescriptive Right to. Roads, Prescriptive Right to.

The public may acquire the right to use a public highway by prescription.

Helena, Montana, April 29, 1909.

Hon. Harry L. Wilson, Billings, Montana.

Dear Sir:

I am in receipt of your letter of April 17, signed by Mr. Charles A. Taylor, deputy asking my opinion regarding the status of roads over the ceded portion of the Crow reservation.

Your statement of facts is to the effect that certain roads thereon have been used continuously for public travel, as trails and for wagon use for a period of over twenty years.

It is difficult to give a general opinion which will cover all the roads in the ceded portion, as the facts concerning the establishment of these roads would not be the same in all cases. There is no doubt but that a public highway may be established by prescription. However, the courts require affirmative proof that the road during the prescriptive period has remained the same, and is well defined and traveled by the public generally. Trails, which might vary in their course during the prescriptive period, are not thus established as public highways. This phase of the matter is discussed fully in the late case of

VanVranken v. Granite County, 35 Mont., 427.

The general principle that a highway may be established by prescription is laid down in the case of

State v. Auchard, 22 Mont. 14,
and approved in

Mont. O. P. Co., v. B. & B. C. M. Co., 25 Mont., 427.

You will find an opinion, addressed to J. W. Speer, County Attorney of Cascade County, reported in the official opinions of Attorney General 1906-'08, at page 225, which discusses the right of the public to acquire a highway by prescription.

If litigation should arise concerning any particular road, I shall be glad to give you my opinion thereon, under a full statement of the facts surrounding the use and establishment of the same.

The law is, generally, that a highway may be established by pre-

scription, but each particular case is governed by its own particular facts and circumstances.

Very truly yours,
ALBERT J. GALEN,
Attorney General.