

Roads, Necessity of Survey. Highways, Necessity of Survey. County Commissioners, Power as to Roads. Survey of Roads, When Necessary. Section Lines, Roads On.

If from the petition for a road, as originally filed, and the report of the viewers appointed to view and lay out the road, it can be determined what the course, termini, length, etc., of the road would be and such road follows its entire length on a section line, it is not necessary that the board of county commissioners have said road surveyed.

June 13, 1911.

Mr. Thomas Downen,
County Commissioner,
Chinook, Montana.

Dear Sir:

I acknowledge receipt of your letter 7th inst., in which you request my official opinion upon the following state of facts:

‘Where a road is to be opened running on section line at all points, is it necessary to have the same surveyed in order to have the same platted?’

Section 1398 of the Revised Codes of 1907 provides:

“If the board approve the report, and there are **no non-consenting land owners**, the highway must by order be declared a public highway, and the road supervisor ordered to open same to the public, and if the board order it, to require the county surveyor to survey the same and plat it, etc.”

By the provisions of this section, it is apparent that the survey and platting of the road is optional with the board of county commissioners. From a close examination of the code provisions on the subject of laying out roads, I fail to find any express provision requiring the board of county commissioners to have a road surveyed and platted. From a reading of all the sections bearing upon the subject, it is apparent that if from the petition as originally filed and the report of the viewers appointed to view and lay out the road, it can be determined what the course, termini, length and probable cost of the construction would be, that this is all that the law requires.

By the provisions of Section 1341 of the Revised Codes, the duty devolves upon the county clerk to include in the minutes of the board of commissioners, all proceedings relative to each road or road district, and he must also keep a book known as a “road book,” in which

must be entered the number and name of each public highway, and general reference to its terminal points and course, and also the date of the filing of each paper with reference thereto.

By the provisions of Section 1357, Sub-division 2, the board of county commissioners must cause to be surveyed, viewed, laid out, recorded, opened and worked, certain highways, and by the provisions of Section 1402, "if a highway is opened or ordered, the final report of the viewers, including the plat, field notes and report of the surveyor must be recorded in the office of the county clerk in books kept for that purpose," and it is my opinion that the provisions of said Sections 1357 and 1402, are modified by the provisions of Section 1398 above quoted, in so far as such survey is optional with the board of county commissioners. The object of a survey is to define accurately, the exact land taken, or required for a public highway, but where a county road is laid out entirely along a section line, which section line, of course, is determined by the government survey of the land, I can see no reason why an additional survey thereof is necessary, and a description of the road could be accurately made by reference to the government survey, this especially in view of the provisions of 1406 of the Revised Codes, providing in substance that in all cases where consent is voluntarily given, or the lands purchased or condemned and paid for, an instrument in writing conveying the right of way and incidents thereto, must be made, filed and recorded in the office of the county clerk.

It is therefore my opinion, that where a road is to be opened running on a section line at all points, that it is not necessary to have the same surveyed, but that a description and plat thereof could be made from the United States survey. However, it is discretionary with the county commissioners whether a survey under such circumstances should be made.

Yours very truly,
ALBERT J. GALEN,
Attorney General.