

State Lands, Public Highways. Highways, Over State Lands. Timber on Right of Way.

Public highways over state lands should be opened pursuant to Section 32, Chapter 147, Session Laws 1909. Timber on rights of way over state lands belongs to the state.

January 16th, 1914.

State Forester,
Helena, Montana.

Dear Sir:

I am in receipt of your communication under date of the 9th instant, setting forth that the county commissioners of Lincoln County are improving a public road upon certain state lands in that county, that the land through which this road passes is heavily timbered with Grade A 1, yellow pine, and you request an opinion as to whether the commissioners of Lincoln County may legally cut and remove this timber in making a road improvement.

When public roads are constructed across state lands, the method pointed out in Sec. 32 of Chap. 147 of the Session Laws of the Eleventh Legislative Assembly should be followed, except, of course, in the case of highways established prior to the enactment of that law. Your letter indicates that the road now being improved is over

a course substantially following the survey plat filed in 1877. Under these circumstances, the commissioners of Lincoln County may open and improve the highway a distance of sixty feet in width, along the traveled course and throughout its entire length, over such state lands. It is my judgment, however, that any timber necessarily removed in improving the highway belongs to the state. Under date of September 16th, 1913, this office rendered an opinion, in response to the request of Hon. W. M. Biggs, county commissioner of Lewis and Clark County, to the effect that standing timber on public highways belongs to the owner of the soil, and not the owner of the easement. A copy of that opinion is attached hereto for your information.

Yours very truly,

D. M. KELLY,
Attorney General.