

Read, Public Highway. Public Highway, Road.

Conditions under which a road becomes a public highway determined herein.

March 28, 1916.

Hon. George W. Ruffcorn,
County Attorney,
Glasgow, Montana.

Dear Sir:

Under date of February 8th, you addressed this office upon the question of whether a certain highway could be considered a public road. Answering that inquiry we cited to you the case of the State v. Zimmer, 45 Mont., 282, in which the Supreme Court laid down the rule that where the county commissioners make a record of a county road, and it is shown that it has been used by the public generally as a public highway, it will usually be deemed to be a public highway. Your statement of facts in the letter of February 8th was too meager, however, to form the basis of an opinion, and under date March 10th you supplied us with further facts in the case. These are briefly: (1) That in 1904 certain residents living along this road petitioned the board of county commissioners to have a road established; (2) That at the time this petition was presented, this road had been traveled for a period of over ten years, but that during these years it was unsurveyed government land, and remained so for several years after the petition was presented; (3) That acting on the petition, the board ordered the road to be surveyed and laid out, which was done, the plat of the survey and the field notes being filed and approved; (4) That it does not appear from the records that the board ever accepted the road. The road was, however, traveled and used by the public for a period of more than five years after this survey, and work was performed on the road by order of the board of commissioners at public expense. Portions of the road were from time to time abandoned by order of the commission, and in 1909 a portion of the road which had not been abandoned, was fenced up by parties over whose land it crossed.

Under this statement of fact, it would seem that the Board had, by doing work at public expense upon this road, accepted it as a public highway, and I am of the opinion the road should be so considered. However, the only means of getting a final determination of this question, since it is largely a question of fact, would be by an action in court to determine the question.

Yours very truly,
J. B. POINDEXTER,
Attorney General.