

**Highways—Right-of-Way, How Acquired.**

Right-of-way for highway may be acquired by condemnation.

February 17th, 1920.

Mr. John N. Edy, Chief Engineer,  
State Highway Commission,  
Building.

Dear Sir:

In response to your verbal request for an opinion relative to the matters contained in a letter to you from the County Commissioners of Silver Bow County, under date of February 4th, in which they make inquiry relative to the manner of procedure in securing a right of way for a highway between Butte and Anaconda, in instances where there are disputes as to the value of the land desired for this purpose.

It will be necessary to proceed by condemnation proceedings in accordance with Sections 7330 to 7355 of the Revised Codes of 1907. You state that some of this land is owned by non-residents and non-resident heirs. Service on such owners will have to be made by publication, same procedure as in an ordinary civil suit.

The proceedings against resident owners may be had and determined in a very short time. The law provides that complaints may be filed and summons issued and the owners given notice to appear before the court or judge at a time and place in such summons specified, and show cause why the property described in such complaints should not be condemned as prayed for. The summons, however, must be served on each defendant at least ten days previous to the time designated in such notice. Upon such hearing by the court, the court may appoint commissioners for the purpose of appraising the land desired to be condemned, and such commissioners so appointed may meet immediately after such appointment and fix the value of said land and make return of their appraisal. If either of the parties are not satisfied with the award of said commissioners, the party not satisfied may appeal from such award, and in the event an appeal is taken, the Board of County Commissioners may deposit the amount of said award with the Clerk of the Court, and take possession of said lands condemned for such highway, and prosecute the work intended to be done thereon.

Respectfully,

S. C. FORD,

Attorney General.