

**Roads—Establishment—Petitions—Road Districts.**

A county road must be established as provided in section 1635 R. C. M. 1921, but where the county has not been divided into road districts it must be considered as constituting one single road district and any ten freeholders of the county who are taxable therein for road purposes may sign the petition provided for in section 1635 R. C. M. 1921.

June 6, 1928.

R. S. McKellar, Esq.,  
County Attorney,  
Glasgow, Montana.

My dear Mr. McKellar:

You have requested my opinion on the following question:

“Where the board of county commissioners, under the discretion vested in it by section 1622 R. C. M. 1921 has since 1918 disregarded the then-established road districts and has not appointed road supervisors but has simply allotted the roads in certain portions of the county to each commissioner to look after, who is qualified to sign a petition for the establishment of a public highway as provided in section 1635 R. C. M. 1921?”

Section 1635 R. C. M. 1921 provides as follows:

“Any ten, or a majority of the freeholders of a road district, taxable therein for road purposes, may petition in writing the board of county commissioners to establish, change, or discontinue any common or public highway therein. When such a highway is petitioned for upon the dividing line between two counties, the same course must be pursued as in other cases, except that a copy of the petition must be presented to the board of county commissioners of each county, who shall act jointly.”

In the case of *State ex rel. McMaster vs. District Court*, 260 Pac. 134, the court used the following language:

“The proceeding prescribed by these sections is initiated by the filing of a petition with the board of county commissioners, signed by any ten, or a majority, of the freeholders of a road district, taxable therein for road purposes.”

This is a quotation from the above statute. However, the court was not attempting in the case before it to define what constituted a road district, and in order to answer your question, that is the question which must be considered by us. It is evident that at the time section 1635, *supra*, was enacted, the road district mentioned therein was a district such as had been created by the board of county commissioners as required by law but since the enactment of section 1622 the establishment of road districts is a matter left to the discretion of the board, and under the facts mentioned by you it appears that it was the intention of the board to abolish all road districts then existing, leaving the entire county in one road district.

It is therefore my opinion that where the county has been divided into road districts the petition in question must be signed by at least ten of the freeholders resident of the road district and taxable therein for road purposes where the road is sought to be established, but that where the county has not been divided into road districts as in this particular instance it must be considered as constituting one single road district and that any ten freeholders of the county who are taxable therein for road purposes may sign the petition.

Very truly yours,

L. A. FOOT,  
Attorney General.