

Cities and Towns—Streets—Closing—Petition.

Section 5306, R. C. M. 1921 as amended by chapter 13, laws of 1929, requires that a petition for the discontinuance of a part of a street must be signed by all the owners of real property abutting on the street except where part of the street is to be closed for school purposes.

Mr. F. E. Van Demark,
City Clerk,
Cut Bank, Montana.

January 8, 1932.

My dear Mr. Van Demark:

I have your request for an opinion on the following question:

“Must the owners of all lots or property abutting on a certain street sign a petition for discontinuance of a small portion of such street in order to vest jurisdiction in the council to entertain the petition, or is the petition sufficient if it is signed by

all the owners of lots or property abutting on the street in the city blocks involved, as distinguished from the owners of property abutting on the street for the full length thereof.”

While, as you are no doubt aware, the attorney general is not by law made the legal adviser of cities and towns, and therefore cannot give you an official opinion, I am glad to render an opinion on this question for your accommodation.

Section 5306, R.C.M. 1921, as amended by chapter 13, laws of 1929, provides as follows:

“The council may discontinue a street or alley in a city or town, or any part thereof, upon the petition in writing of all the owners of lots on the streets or alleys, if it can be done without detriment to the public interest; provided that where the street or alley is to be closed for school purposes, a petition signed by seventy-five per cent (75%) of the lot owners on the whole street or alley to be closed, will be required.”

The wording of this statute seems clear and unambiguous and applying the general rule of construction, to-wit, that in construing a statute nothing must be added to or detracted therefrom, I find that the statute requires all the owners of lots on the streets to sign a petition. That this was also the intent of the legislature is further shown by the fact that the statute was amended so as to require only 75% of the lot owners to sign where the street or alley was to be closed for school purposes.

It has been held that property owners on a street or alley have a right in the entire street or alley as a means of ingress and egress to and from their property and the legislature no doubt had this in mind in fixing the requirements of this statute.

It is therefore my opinion that the petition submitted to you is not sufficient.

Very truly yours,

L. A. FOOT,
Attorney General.