

1921. (Section 1613, Revised Codes 1921.)

Assuming, as we may, that the right of way in mind has to do with a common highway it is our view that a petition such as is demanded by Sections 1635 and 1636, supra, is essential before the board can proceed. The board of county commissioners of a county is without power on its own initiative to establish, alter or discontinue any common highway even when deemed necessary. (State ex rel. McMaster v. District Court, 80 Mont. 228; Flynn v. Beaverhead County, 54 Mont. 309.)

The authority granted to the board of county commissioners as amended Sections 1622 and 4465, Revised Codes of 1921, must be exercised in the manner and under the circumstances pointed out by Sections 1635-1651, supra, and not otherwise. (State v. District Court, above.)

Opinion No. 97

County Commissioners — Highway — Right-of-Way.

HELD: The Board of County Commissioners is without power to purchase a right of way for a common highway unless so petitioned by ten or a majority of the freeholders of a road district who are taxable therein for road purposes.

March 3, 1933.

You inquired whether or not the Board of County Commissioners could purchase a right of way for highway purposes without such a petition as Sections 1635 and 1636, Revised Codes 1921, require being presented to it.

Public highways in this state are classed as common highways, main highways and state highways. All highways, which are not established or improved in the manner provided for state highways, shall be common or public highways. Common or public highways shall be such as are established or improved in the manner provided by Sections 1635-1651, R. C. M.