

No. 488

**COUNTIES—COUNTY COMMISSIONERS—ROADS—  
HIGHWAYS—MOTOR VEHICLES—AUTO PASSES—  
LIVESTOCK**

**Held:** Board of County Commissioners may construct, or cause to be constructed, on public or county roads passes across which such roads may continue and which shall be so constructed that automobiles and trucks may cross them and which shall be impassable for livestock.

September 25, 1942.

Mr. John D. Stafford  
County Attorney  
Cascade County  
Great Falls, Montana

Dear Mr. Stafford:

You have inquired of this office whether the Board of County Commissioners of Cascade County has authority and power to construct or cause to be constructed on county roads auto passes excluding livestock.

Section 4486.1 and 4486.2, Revised Codes of Montana, 1935, provide:

"4486.1. Auto passes excluding livestock may be constructed on public roads connecting with fenced state highway. Where a public road or roads connects with a state highway, which state highway is fenced on both sides, the county commissioners, of the county in which said roads are located, may cause to be constructed and maintained thereon extensions of the fence on the sides of the state highway and across the intersecting road leaving in such fences a pass across which must be constructed a passage which will permit the passage of automobiles and trucks but shall prevent and exclude loose livestock from drifting upon said state highway, and there shall also be maintained in said extensions a gate to permit the passage of livestock, wagons or other vehicles."

"4486.2. Same—construction on public or county roads—purpose and intent of act. County commissioners may construct, or cause to be constructed, under their direction, on public or county roads, passes across which such roads may continue and which such shall be so constructed that automobiles and trucks may cross same and which shall be impassable for livestock. Where necessary gates shall also be maintained as provided in section 4486.1; provided, that it is the spirit and intent of the statute, that the discretion granted to boards of county commissioners under this act shall consider primarily the use and benefit of public roads to the general public."

The above statutes are clear and specific. They grant to boards of county commissioners a definite power—to be used in their discretion.

It is therefore my opinion that—if the County Commissioners of Cascade County in their sound discretion consider the general public's use and benefit of public roads will be enhanced by the construction on certain public or county roads of passes across which such roads may continue and which shall be so constructed that automobiles and trucks may cross them and which shall be impassable for livestock—the board may proceed under the authority granted by the above quoted statutes.

Sincerely yours,

R. V. BOTTOMLY  
Attorney General