

Dear Mr. Parcels:

You have submitted the following:

"The unincorporated village or town of Park City, Stillwater County, Montana, originally platted, covered a full section of land.

"A petition has been presented to the board of county commissioners by some eight property owners requesting the board to close certain streets and alleys and that the ownership of said streets and alleys be vested by order of the Board in the various owners to the center of the streets and alleys upon which their several properties abut, and that said vacated lands be thereafter assessed to said owners as acreage by metes and bounds."

The statutes pertaining to the above question are as follows:

Section 5306, Revised Codes of Montana, 1935, as amended by Chapter 1, Laws of 1941, provides:

"The council, or county commissioners if the town be unincorporated, may discontinue a street or any part thereof, in a city or town or unincorporated town, upon the petition in writing of all 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 percent (75%) of the lot owners on the whole street or alley to be closed, will be required."

It is to be noted that the provisions of the foregoing statute authorize the board of county commissioners to discontinue a street or any part thereof, in an unincorporated town, upon the petition in writing of all owners of lots on the streets or alleys, if it can be done without detriment to the public interest. The detriment to the public interest is to be determined in the sound discretion of the board of county commissioners.

A former attorney general has held, and I agree with his opinion, that the petition must be signed by all the owners of lots on such streets or alleys petitioned to be closed. (Report and Official Opinions of Attorney General, Volume 12, page 235.)

**Opinion No. 164.**

**Unincorporated Villages or Towns—  
County Commissioners—Cities or  
Towns.**

Held: A board of county commissioners, may, if in their sound discretion determine that it may be done without detriment to the public interest, discontinue a street or alley, or a portion thereof, in an unincorporated town or village, upon a petition in writing signed by all the owners of lots on such streets or alleys, under Chapter 1, Laws of 1941.

January 15, 1944.

Mr. M. L. Parcels  
County Attorney  
Stillwater County  
Columbus, Montana

Section 5308, Revised Codes of Montana, 1935, provides in part as follows:

" . . . Provided, however, that when only a portion or portions of any village or townsite in any unincorporated village or town is sought to be vacated or excluded therefrom and said portion or portions is not less than four blocks in area, and situated at the limits or boundaries of said village or townsite, a verified petition may be filed in the office of the clerk of the district court of the county where said village or townsite is situated by the owner or owners of all the property sought to be vacated or excluded, which petition shall be addressed to the district court of the said county, setting forth the description of the portion or portions sought to be excluded and the reason or reasons for desiring such portion or portions to be excluded. A citation shall thereupon be issued by the judge of the court before whom said matter is pending, citing all persons interested in said matter to appear before said court at a time and place specified in said citation, but at a time not less than three weeks from the date of said citation, which citation shall be published in a newspaper of regular circulation in the said county, or if no such newspaper is in said county, then in such newspaper located in an adjoining county of the state, which citation shall be published once a week for two successive weeks before the date of said hearing. Upon the hearing of said petition and upon conditions that may seem reasonable, the court may vacate and exclude the portion or portions of said village or townsite as prayed for in said petition, including any streets, alleys, parks or boulevards upon which no public easement or easements shall vest, and such excluded property shall be described by metes and bounds in the decree of the court, and said property shall be assessed accordingly."

It will be noted that Section 5308, Revised Codes of Montana, 1935, provides the method of procedure to follow in vacating and excluding a portion of any village or townsite of an unincorporated townsite. An analysis of the pertinent part of said Section is as follows:

1. Such portion must contain at least four blocks in area.

2. Such portion must be situated at the limits or boundaries of said townsite.

3. A verified petition must be filed in the office of the clerk of the district court of the county wherein such townsite is located, signed by the owner or owners of all the land sought to be vacated or excluded, and addressed to the district court.

4. The petition must set forth the description of the area to be excluded with the reasons therefor.

There has been a great deal of confusion on the part of boards of county commissioners in attempting to vacate plats of villages or townsites, tracts, acreages and additions and also in attempting to vacate parts of unincorporated cities and towns, and in an attempt to rectify such actions of boards of county commissioners, the legislature passed Chapter 13, Laws of 1943, which appears to be an attempted curative act.

Therefore, it is my opinion that a board of county commissioners may, if in their sound discretion they determine it can be done without detriment to the public interest, discontinue a street or alley, or portion thereof, in an unincorporated town or village, upon a petition in writing signed by all the owners of lots on such streets or alleys, under Chapter 1, Laws of 1941.

It is further my opinion that where it is sought to vacate or exclude a portion or portions of the townsite of an unincorporated village or town, it is necessary to file in the office of the clerk of the district court in the county where the town or village is situated, a verified petition signed by all of the owners of all of the property sought to be vacated or excluded, said petition to be addressed to the district court of said county.

That said portion to be vacated or excluded must contain or comprise at least four blocks in area; such portion must be situated at or contiguous to the limits or boundaries of said village or townsite; that such petition must set forth the description of the area to be excluded, together with the reasons for desiring such portion or portions to be excluded.

Sincerely yours,  
R. V. BOTTOMLY  
Attorney General