

VOLUME NO. 36**Opinion No. 44**

COUNTY COMMISSIONERS — Federal aid secondary route selections; HIGHWAY COMMISSION — Authority to select federal aid secondary routes; HIGHWAYS — County Commissioners, federal aid secondary route selection. 1954 Secondary Road Plan; 23 U.S.C.A. 103; Bureau of Public Roads Policy and Procedure Memorandum 10-1; Section 32-2407, R.C.M. 1947.

HELD The Montana Highway Commission is empowered to make the final route decision with regard to the federal-aid secondary system. The Commission, however, must work with local county officials in evaluating the possible alternative routes prior to final determination.

December 10, 1975

Mr. A. Evon Anderson
Chouteau County Attorney
Fort Benton, Montana 59442

Dear Mr. Anderson:

You have requested my opinion on the following question:

When involved in the process of selecting specific routes for designated secondary highways to be constructed with federal aid funds, who, as between the Montana Highway Commission and the Board of County

Commissioners, is empowered to make the final decision with regard to the specific route to be constructed?

The Montana State Highway Commission entered into an agreement with the Bureau of Public Roads (now the Department of Transportation) in 1966, adopting the 1954 Secondary Road Plan. The pertinent section of the Secondary Road Plan is as follows:

(B) (3) The selection of the route on the federal-aid secondary system is determined by the State Highway Department and the appropriate local officials (county commissioners) in cooperation with each other and under provisions of PPM 10-1.

PPM 10-1 refers to Policy and Procedure Memorandum 10-1 published by the Bureau of Public Roads, May 28, 1965. The purpose of the publication is, in part, "to set forth policies and procedures relating to designation of...the Federal-aid secondary highway system." Pertinent sections of the memorandum are as follows:

(7) GENERAL PROCEDURES

(a) The State highway department has the responsibility for initiating route selections and proposing changes in routes already designated ...

10 PROCEDURES FOR SECONDARY SYSTEM

(b) Proposals covering system changes are to contain a statement by the State highway department that there has been compliance with section 103 (c) of Title 23, U.S. Code, regarding cooperation with appropriate local authorities. The manner and extent of such cooperation are to be determined by the state ...

23 U.S.C.A. 103, referred to in section 10 (b) above reads in part, as follows:

(c) The Federal-aid secondary system shall be selected by the State Highway Departments and the appropriate local officials in cooperation with each other, subject to approval by the Secretary, as provided in subsection (4) of this section ...

Section 32-2407, R.C.M. 1947 is also pertinent to this problem, and reads in part:

(2) The Highway commission shall in cooperation with the board of county commissioners, select such public highways in the state as shall be classified as the federal-aid secondary system ...

From these provisions, it is clear that under both state and federal law, it is the responsibility of the Highway Commission to select routes for the federal-aid secondary system, in cooperation with the county commissioners. The crux of your question revolves around the interpretation of the word "cooperation".

In Webster's New International Dictionary, 2d Edition, cooperate is defined to mean:

To act or operate jointly with another or others; to concur in action, effort, or effect.

From the above definition, the Highway Commission should "operate jointly" with county officials in evaluating alternative routes for the secondary system. This, in fact, is required by federal law. 23 U.S.C.A. 103. It is, however, the responsibility of the Highway Commission to make the final determination of the route selection. Policy and Procedure Memorandum 10-1.

I do not take the term "cooperation" to mean that the county commissioners must approve the final route selection. All that is necessary is that the Highway Commission work with the county officials in determining what the best route would be. After this evaluation is completed, it is up to the Commission to make the final route selection. If this were not the case, individual counties could frustrate the Highway Commission's state-wide plan for secondary roads. The law was not intended to give the counties veto power over the Commission's route selections.

THEREFORE, IT IS MY OPINION:

The Montana Highway Commission is empowered to make the final route decision with regard to the federal-aid secondary system. The Commission, however, must work with local county officials in evaluating the possible alternative routes prior to final determination.

Very truly yours,

ROBERT L. WOODAHL
Attorney General