

VOLUME NO. 40

OPINION NO. 23

CITIES AND TOWNS - Streets and alleys, definition of "discontinue";

COUNTIES - County roads, streets and alleys, definition of "discontinue";

HIGHWAYS - Local roads, streets and alleys, definition of "discontinue";

MONTANA CODE ANNOTATED - Sections 1-2-106, 7-3-4447, 7-3-4448, 7-14-104, 7-14-2601, 7-14-2602, 7-14-2615 to 7-14-2617, 7-14-4114, 7-14-4115, 60-1-103(1);

REVISED CODES OF MONTANA, 1947 - Section 11-2801.

HELD: The term "discontinue" as utilized in Title 7, chapter 14, parts 26 and 41, MCA, is synonymous with the terms "abandon" and "vacate."

30 September 1983

Mike McGrath
Lewis and Clark County Attorney
Lewis and Clark County Courthouse
Helena MT 59623

Dear Mr. McGrath:

You have requested my opinion as to whether the term "discontinue" means the same as or something less than "abandonment" as the latter term is defined by section 7-14-2601(3)(b), MCA, with respect to county roads, streets and alleys.

The methods for establishment, alteration and abandonment of county roads are provided by Title 7, chapter 14, part 26, MCA. The law provides that upon appropriate petition the board of county commissioners may "open, establish, construct, change, abandon, or discontinue any county road in the district." § 7-14-2601, MCA. The term "abandonment" is defined as the "cessation of use of right-of-way (easement) or activity thereon with no intention to reclaim or use again and is sometimes called 'vacation'." § 7-14-2601(3)(b), MCA; see also § 60-1-103(1), MCA. The term "discontinue" is not specifically defined in the Montana Code Annotated.

Words and phrases used in the Montana Code Annotated are to be construed according to the context and the approved usage of the language. § 1-2-106, MCA. The word "discontinue" is defined by Webster's New Collegiate Dictionary (1981 ed.) as, "to abandon or terminate by a legal discontinuance"; and by Black's Law Dictionary (5th ed.) as, "the termination or abandonment of a project, structure, highway, or the like." From the plain meaning of the words, "discontinue" and "abandon" appear to be synonymous.

The ambiguity arises in an examination of the context of the statutes utilizing the terms "abandon," "discontinue," "vacate," and "close." With respect to county roads, the statutes refer to "abandonment," "discontinuance," and "vacation" in various combinations. See, e.g., §§ 7-14-2601, 7-14-2602, 7-14-2615, 7-14-104, MCA. A separate procedure is required for "discontinuance" of streets and alleys located in an unincorporated town within the county. §§ 7-14-2616, 7-14-2617, MCA. These statutes use the terms "discontinue," "close," and "vacate" as follows:

- (1) The county commissioners may discontinue a street or alley or any part thereof in an unincorporated town or townsite upon the petition in writing of all owners of lots on the street or alley if it can be done without detriment to the public interest.
- (2) Where the street or alley is to be closed for school purposes, a petition signed by 75% of the lot owners on the whole street or alley to be closed will be required.

(3) Before acting upon such petition, a notice must be published or posted in three public places, stating when such petition will be acted on and what street or alley or part thereof is asked to be vacated. [§ 7-14-2616, MCA, emphasis added.]

The vacation authorized by 7-14-2616 shall not affect the right of any public utility to continue to maintain its plant and equipment in any such street or alley. [§ 7-14-2617, MCA, emphasis added.]

For cities and towns, essentially identical statutes appear in the Montana Code Annotated as sections 7-14-4114 and 7-14-4115, MCA. The predecessor to all four sections was section 11-2801, R.C.M. 1947. The Montana Supreme Court commented on the legislative history of section 11-2801, R.C.M. 1947, in State ex rel. Smart v. City of Big Timber, 165 Mont. 328, 334-35, 528 P.2d 688 (1974), as follows:

The history of section 11-2801, R.C.M.1947, indicates it is the product of enactments and amendments dating back to 1887. Historically, it can be divided into three separate sections. The statute originally provided that a city council could discontinue a street upon petition of all the lot owners on that street. Sec. 429, 5th Div.Comp.Stat.1887. In 1929, a bill was introduced in the legislature to add the requirement that the discontinuance must be done "without detriment to the public interest." House Bill No. 39, Twenty-first Legislative Assembly, 1929. The provision for 75% approval of street closings for school purposes was added by the Affairs of Cities committee before the bill was passed. House Journal, Twenty-first Session, p. 125; Sec. 1, Ch. 13, L. 1929. In 1945, the statute was again amended to include the provision that vacation of a street will not affect the rights of public utilities to maintain their equipment there. Sec. 1, Ch. 36, L. 1945.

Our reason for including the rather lengthy history of section 11-2801, R.C.M.1947, is to demonstrate that the present statute is the

amalgam of the intent of a number of legislatures. This is important when this single statute purports to deal with the "discontinuance", "closing", and "vacation" of streets. It appears that the terms were thought of by the draftsmen as being interchangeable.

In a later opinion, the Court declared that the term "close" as it appears in section 7-14-4114(2), MCA, pertaining to school purposes, did not mean the same as "vacate." Wynia v. City of Great Falls, 183 Mont. 458, 600 P.2d 802 (1979). In Wynia, the city did not intend to vacate its legal interest or revoke its acceptance of the dedicated land, but rather intended to maintain its interest for public purposes other than transportation. In closing the streets, the city had followed section 7-14-4114, MCA, but had not followed the separate procedures of sections 7-3-4447 and 7-3-4448, MCA. The latter statutes apply only to cities with the manager-commission form of government. Cities with a mayor-council form of government are bound solely by sections 7-14-4114 and 7-14-4115. If "discontinue" as utilized in Title 7, chapter 14, parts 26 and 41, MCA, does not mean "vacate," then most cities would be left without a statutory procedure by which to terminate their legal interest in streets and alleys within their jurisdiction. This result cannot have been intended by the Legislature. An interpretation which leads to unreasonable results is to be rejected in favor of an interpretation which leads to reasonable results. Yunker v. Murray, 170 Mont. 427, 554 P.2d 285 (1976); Sands, Sutherland's Statutory Construction § 45.12.

Historically, the terms "vacation" and "discontinuance" were ordinarily employed to describe the termination of the existence of a public highway by means of affirmative action by the public authority. 39 Am. Jur. 2d Highways, Streets and Bridges § 138; Annot., 68 A.L.R. 794; Annot., 175 A.L.R. 760; McQuillan, Municipal Corporations § 30.202. The term "abandonment" described the termination of a public highway by nonuser or prescription. 39 Am. Jur. 2d Highways § 138; Annot., 175 A.L.R. 760. By specifically defining "abandonment" as synonymous with "vacation," the Legislature intended to ensure that statutory procedures would be followed with regard to the termination of highways, roads, streets and other public ways. The Legislature did not

intend to change the historically accepted definition of "discontinuance."

THEREFORE, IT IS MY OPINION:

The term "discontinue" as utilized in Title 7, chapter 14, parts 26 and 41, MCA, is synonymous with the terms "abandon" and "vacate."

Very truly yours,

MIKE GREELY
Attorney General