

COUNTIES - Maintenance of county roads;
COUNTY COMMISSIONERS - Maintenance of county roads;
LOCAL GOVERNMENT - Maintenance of county roads;
MONTANA CODE ANNOTATED - Sections 7-14-2101 to
7-14-2103, 60-1-102.

- HELD: 1. A county is required to maintain county roads which were petitioned for by freeholders. A county has the power and discretion to maintain all other county roads as necessary for the best interest of the county roads and the road districts.
2. A county is not required by law to maintain a county road created by dedication to the public in 1913 and maintained by the county from 1952 until 1981.

31 October 1985

Mike Salvagni
Gallatin County Attorney
Law and Justice Center
615 South 16th Street
Bozeman MT 59715

Dear Mr. Salvagni:

You have requested an opinion on the following questions:

1. Is a county required to maintain all county roads?
2. Is a county required by law to maintain a county road created by dedication to the

public in 1913 and maintained by the county from 1952 until 1981?

In order to allocate its road maintenance budget and to determine the priority of road maintenance projects within Gallatin County, the Gallatin County board of county commissioners is attempting to identify those roads which the county is legally required to maintain. The board has received a specific request for maintenance of certain roads within a subdivision in the county. The roads at issue were dedicated to the public and accepted by the county commissioners in 1913, and were maintained by the county from 1952 until 1981.

The general statutory provisions related to county roads are contained in Title 7, chapter 14, part 21, MCA. Section 7-14-2101, MCA, provides:

(1) The board of county commissioners, under such limitations and restrictions as are prescribed by law, may:

(a)(i) lay out, maintain, control, and manage county roads and bridges within the county;

(ii) levy taxes therefor as provided by law;

....

Section 7-14-2102, MCA, further provides: "Each board of county commissioners may in its discretion do whatever may be necessary for the best interest of the county roads and the road districts." And section 7-14-2103, MCA, states:

(1) Each board of county commissioners has general supervision over the county roads within the county.

(2) Each board shall survey, view, lay out, record, open, work, and maintain county roads which are petitioned for by freeholders. Guideposts shall be erected.

(3) Each board shall discontinue or abandon county roads when freeholders properly petition therefor. [Emphasis added.]

Thus, the board of county commissioners has general supervision over, and the power to maintain, all county roads.

Section 7-14-2103(2), MCA, provides the board shall maintain county roads which were petitioned for by freeholders. The language is mandatory. State ex rel. Palmer v. Hart, ___ Mont. ___, 655 P.2d 965, 968-69 (1982); State ex rel. McCabe v. District Court, 106 Mont. 272, 76 P.2d 634, 637 (1938). The statutes regarding general powers relating to county roads, §§ 7-14-2101, 7-14-2102, MCA, provide the board of county commissioners may maintain county roads. This language is permissive, id., and indicates county maintenance of county roads other than those established through the petition process is discretionary.

This conclusion is consistent with the legislative policy and intent set forth in section 60-1-102, MCA, where the Legislature states its intention:

(1) to place a high degree of trust in the hands of those officials whose duty it is, within the limits of available funds, to plan, develop, operate, maintain, and protect the highway facilities of this state for present as well as for future use;

(2) to make the department of highways custodian of the federal-aid and state highways and to impose similar responsibilities upon the boards of county commissioners with respect to county roads and upon municipal officials with respect to the streets under their jurisdiction;

(3) that the state shall have integrated systems of highways, roads, and streets and that the department of highways, the counties, and municipalities assist and cooperate with each other to that end;

(4) to provide sufficiently broad authority to enable the highway officials at all levels of government to function adequately and efficiently in all areas of their respective responsibilities, subject to the limitations

of the constitution and the legislative mandate hereinafter imposed.

Clearly, the Legislature intended to invest broad authority and discretion in county officials. Ingram-Clevenger, Inc. v. Lewis and Clark County, ___ Mont. ___, 636 P.2d 1372, 1376 (1981).

Therefore, it is my opinion that, while the county is statutorily required to maintain county roads established through the petition process, other county roads are maintained at the discretion of the board of county commissioners. The board has the power and discretion to maintain these county roads as necessary for the best interest of the county and the road districts. This opinion does not address any question of liability with regard to maintenance of county roads since that question is outside the scope of inquiry. However, it may be appropriate for the county commissioners to consider liability factors in the exercise of their discretion concerning county roads.

As explained above, a county is required to maintain petitioned-for county roads, but is not legally required to maintain other county roads, which include county roads created by dedication to the public. The board of county commissioners exercised its discretion to authorize maintenance of a county road created by dedication to the public from 1952 until 1981. It is my opinion that the county is not required by law to maintain the road, but has the power and discretion within the limits of available funds to do so.

THEREFORE, IT IS MY OPINION:

1. A county is required to maintain county roads which were petitioned for by freeholders. A county has the power and discretion to maintain all other county roads as necessary for the best interest of the county roads and the road districts.
2. A county is not required by law to maintain a county road created by dedication to the public in 1913 and maintained by the county from 1952 until 1981.

Very truly yours,

MIKE GREELY
Attorney General