

VOLUME NO. 41

OPINION NO. 61

COUNTY COMMISSIONERS - Authority to create rural improvement district to improve petitioned county roads;
HIGHWAYS - Petitioned county roads included in definition in section 7-12-2101(11), MCA;

RURAL SPECIAL IMPROVEMENT DISTRICTS - Authority to improve petitioned county roads and duty to maintain them;

MONTANA CODE ANNOTATED - Sections 7-12-2101(11), 7-12-2102, 7-12-2161, 7-12-4102, 7-14-2102, 7-14-2103(2).

- HELD: 1. A rural special improvement district may be created to improve a county road which has been established by petition.
2. If a district is created for that purpose, the district is responsible for the costs of maintenance and repair of the road.

2 May 1986

Mike Salvagni
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Law and Justice Center
615 South 16th Street
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Dear Mr. Salvagni:

You have requested my opinion on the following questions:

1. May a board of county commissioners create a rural special improvement district to improve a county road which has been established by the county road petition process?
2. If a rural special improvement district may be created to improve a county road established by petition, what entity is responsible for the maintenance of the improved road?

Regarding your first question, section 7-12-2102, MCA, authorizes the creation of rural special improvement districts. It states in pertinent part:

(1) Whenever the public interest or convenience may require, the board of county commissioners is hereby authorized and empowered to order and create special improvement districts outside of the limits of

incorporated towns and cities for the purpose of building, constructing, or acquiring by purchase one or more of the improvements of the kind described in 7-12-4102, in or for the benefit of the special improvement district.

The improvements authorized in section 7-12-4102, MCA, include paving or repaving "streets, avenues, alleys, or places or public ways." § 7-12-4102(2)(c)(iii), MCA. In your memorandum you questioned the interpretation of these terms to include "roads." It is my opinion that "streets" and "public ways" both include "roads." Section 7-12-2101(11), MCA, defines "street" to mean "avenues, highways, lanes, alleys, crossings or intersections, courts, and places which have been dedicated and accepted according to the law or in common and undisputed use by the public for a period of not less than 5 years." In your memorandum you interpreted the definition to include only streets, alleys, etc., that are dedicated or in common and undisputed use. I do not interpret the definition that way. The definition refers to avenues, highways, etc., and places which have been dedicated. If the Legislature had meant to modify all the terms in the definition with "which have been dedicated" it would have so indicated by placing a comma after "places." See Sutherland Statutory Construction § 12.15, p. 135 (4th ed.). Statutes can be expressed only in words, which in turn must be logically interpreted according to grammatical and statutory rules. State ex rel. Stafford v. Fox-Great Falls Theatre Corporation, 114 Mont. 52, 132 P.2d 689, 696 (1943).

In any event, the term "public ways" in section 7-12-4102(2)(c), MCA, would undoubtedly include roads.

Therefore, the board of county commissioners has authority to order the creation of a rural special improvement district to improve a county road that was established by petition.

Regarding your next question, in your memorandum you indicated that the proposed rural special improvement district will be assessed only for paving the county road in question and not for maintaining it.

Section 7-12-2161, MCA, requires the board of county commissioners to estimate the cost of maintaining,

preserving, or repairing the improvements in each district, and to levy and assess all the property within the district for the entire cost. The statute must be read, and the legislative intent determined, according to the clear meaning of the language used. Rierson v. State, 188 Mont. 522, 614 P.2d 1020, 1023 (1980).

The Legislature evidently intended rural special improvement districts to be responsible for the costs of maintenance and repair as well as the initial improvement.

In your memorandum you mentioned a possible conflict with section 7-14-2103(2), MCA, which requires the board of county commissioners to maintain county roads which were petitioned for by freeholders. This statute does not create a conflict. Section 7-14-2102, MCA, authorizes the board of county commissioners to do whatever is necessary for the best interests of the county roads. The rural special improvement district statutes empower the board of county commissioners to establish a district to assess and levy the taxes for improvements and maintenance in the district, and to generally administer the district. Therefore, even though the rural special improvement district pays for the maintenance of the road, the board of county commissioners is still administering the maintenance of the road.

Moreover, the requirement that the board of county commissioners maintain a petitioned county road does not mean that the board is required to pave and improve it. The board is only required to do whatever is necessary for the best interest of the road. § 7-14-2102, MCA. Obviously, the location of the road and the amount of traffic are primary considerations in the kind of maintenance provided.

Finally, the rules of statutory construction necessitate interpreting the various statutes pertaining to maintenance of county roads to make each statute operative. See Cottingham v. State Board of Examiners, 134 Mont. 1, 328 P.2d 907, 919 (1958).

On this basis, I conclude that if a rural special improvement district is established to improve a county petitioned road, the district must be assessed and levied for the road's maintenance and repair.

THEREFORE, IT IS MY OPINION:

1. A rural special improvement district may be created to improve a county road which has been established by petition.
2. If a district is created for that purpose, the district is responsible for the costs of maintenance and repair of the road.

Very truly yours,

MIKE GREELY
Attorney General