

Handwritten: J. DeRose
3/17/52

March 14, 1952
Op. No. 52-74

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ARIZONA ATTORNEY GENERAL

Mr. Barry DeRose
County Attorney
Gila County Courthouse
Globe, Arizona

Dear Mr. DeRose:

We have your letter of February 8 wherein you state:

"Is a dedicated street in a sub-division, the plat of which having been recorded in the County Recorder's office and the Board of Supervisors having accepted the dedicated street, a designated County highway, so that the County can maintain said highway and not be subject to the restrictions as provided in Section 59-601?

If the answer to the above question is that the highway is not a designated County highway, can the Board of Supervisors merely by resolution designate it as a County highway?

If they cannot by resolution designate the highway as a County highway, must the procedure be followed as provided in Section 59-601 of the Arizona Code, that is, by the presentation of a petition signed by ten or more resident taxpayers? If they do follow the procedure as outlined in Section 59-601, will the highway then be classified as a legally designated highway?"

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The dedication of a street in a subdivision is not of itself sufficient to make the street a county highway although the county board approves the plat of the subdivision. The method of establishing a county highway generally is set forth in Section 59-601 of the Code. However, we think Section 59-610 of the Code provides an additional method of creating a county highway in unincorporated towns. This section reads:

"Public highways in unincorporated towns.--In all towns in this state not incorporated, the streets shall be considered as public highways, and under the control of the board of supervisors of the county in which such towns may be situated. The boards may designate in all such towns in their respective counties what streets shall be considered public highways and give appropriate names to them."

The first sentence in the section declares all streets in such towns public highways, under the control of the county board; the second sentence authorizes the board to go further and take affirmative action by designating certain streets therein public highways. When the county board designates a street in an unincorporated town as a public highway under the second sentence of this section the street attains the status of a county highway. The formalities of establishing a county road have been substantially complied with, the right of way is acquired by the dedication, the location of the street is shown and it is open to public use, it is under the control of the board and the subsequent action of the board in declaring it a public highway is equivalent to declaring it to be a county road.

Unless we give this interpretation to the section, the second sentence of the section is meaningless, the first sentence declares all streets in the town public highways under the control of the board and it would add nothing to the statute by permitting the board to again declare one of the streets a public highway. Therefore, the second sentence in the section must mean that when the street is so declared a public highway it becomes a county road under the control of the board.

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Argument in favor of this interpretation is strengthened by considering the history of Section 59-610. The section appeared in the 1913 Code as two separate statutes, 5070 and 5071. The first sentence of 59-610 was 5070 and declared the streets public highways under the control of the board; the second sentence was 5071, which authorized the board to designate one or more of the streets a public highway. The two sections were consolidated in the 1928 Code but this was to simplify and reduce statutory law.

We have read the case of Board v. Udall, 38 Ariz. 397, 1 Pac. 2d 343, and note that the court says that Section 59-601 is the exclusive method of establishing a county road but in that case the question of streets in towns was not before the court and Section 59-610 was not called to its attention.

We also call your attention to Section 59-631, ACA 1939, Supplement, which authorizes the county board to make limited expenditures on public roads and streets without the corporate limits of cities or towns. This section reads:

"Public roads and streets other than legally designated highways--Maintenance by boards of supervisors.--The boards of supervisors may expend public money for the maintenance of public roads and streets other than legally designated state and county highways located without the limits of any incorporated city or town. Before expending public money thereon, such roads or streets shall be laid out, opened and constructed without cost to the county. 'Maintenance' on other than legally designated state and county highways shall not be construed to include purchasing or laying rock products, cement or petroleum product materials."

There is another instance where a county could maintain a street in an unincorporated town and that is when

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the street is designated as a state route, in which event it remains a county road to be maintained by the county until it is designated as a state highway. Section 59-202, ACA 1939.

Therefore it is our opinion that the county board does not have authority to spend county funds on dedicated streets in subdivisions but that the county may spend county funds on such streets in an unincorporated town as the county board shall designate as public highways under said Section 59-610 or on state routes not declared state highways, as provided in Section 59-202, and it may spend county money for limited purposes on certain roads and streets mentioned in said Section 59-631, supra, and this section could include subdivisions if all statutory requirements appear.

Yours truly,

FRED O. WILSON
Attorney General

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Assistant Attorney General

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