

COMPILED
LAWS OF UTAH

1907

THE
COMPILED LAWS
OF THE
STATE OF UTAH
1907



Compiled, annotated, and published by authority
of an act of the Legislature by

JAMES T. HAMMOND,
GRANT H. SMITH,
Compilation Commissioners.

UTAH STATE ARCHIVES

Together with the Constitution of the United States,
the Constitution of the State of Utah, the
Enabling Act, and the Naturali-
zation Laws.



COMPILED LAWS

STATE OF UTAH

1907

Copyright 1908
by CHARLES S. TINGEY.
Secretary of State.

UTAH STATE ARCHIVES

PRESS AND BINDERY
OF
SKELTON PUBLISHING CO.
SALT LAKE CITY

city, town, or village, for culinary, household, or other domestic purposes. Any person, association of persons, or corporation, violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor. '03, p. 31.

TITLE 30.

HIGHWAYS.

CHAPTER 1.

GENERAL PROVISIONS.

1114. Defined. In all counties of this state, all roads, streets, alleys, lanes, courts, places, trails, and bridges laid out or erected as such by the public, or dedicated or abandoned to the public, or made such in actions for the partition of real property, are public highways.

Cal. Pol. C., § 2618*. Mont. Pol. C., § 2600*. Highways defined, § 2498.
Dedication of streets, etc., § 2014.

1115. When deemed dedicated. A highway shall be deemed to have been dedicated and abandoned to the use of the public when it has been continuously used as a public thoroughfare for a period of ten years.

The extent of the dedication is determined by all the circumstances, not only by the part actually used, but also the width of the highways in the vicinity and of the system of which the particular highway is a part.

Burrows v. Guest, 5 U. 91; 12 P. 847.

Wilson v. Hull, 7 U. 90; 24 P. 799.

Whitesides v. Green, 13 U. 341; 44 P. 1032.

Intention to dedicate presumed. Where the public assumes to appropriate land for public use, and the owner interposes no objection, but acquiesces in its continual use by the public, an intention to dedicate will be presumed.

Whittaker v. Ferguson, 16 U. 240; 51 P. 980.

Dedication inferred from long continued use. Where land has been set apart by the owner for public use as a highway and accepted by the public, the right of the public does not depend upon a ten or twenty years' user or possession; the dedication may be inferred from long continued use by the public with the knowledge of the owner and without objection by him.

Schettler v. Lynch, 23 U. 305; 64 P. 955.

Grantees are bound by the dedication. Land having been once dedicated by the owner of the soil as a highway and having been accepted by

the public, all subsequent grantees of abutting lands are bound by such dedication and have no right to obstruct any portion of the street.

Id.

Dedication express or implied. A dedication of land for a public highway may be either express, as where the owner manifests his purpose by a grant evidenced by writing, or implied, when the acts and conduct of the owner clearly manifest the intention on his part to devote the land to the public use; but in either case it is always a question of intention, and no particular formality or form of words is necessary.

Id.

There must be dedication and acceptance. To make a dedication complete, there must not only be an intention on the part of the owner to set apart the land for the use and benefit of the public, but there must be an acceptance of the dedication by the public.

Culmer v. S. L. City, 27 U. 252; 75 P. 620.

Acceptance may be inferred.

Wilson v. Hull, 7 U. 90; 24 P. 799.

Facts tending to show dedication.

Davis v. O. S. L. R. R. Co., 31 U. —; 88 P. 2.

1116. Continue until abandoned. All highways once established must continue to be highways until abandoned by order of the board of county commissioners of the county in which they are situated, by operation of law, or by judgment of a court of competent jurisdiction; *provided*, that a road not used or worked for a period of five years ceases to be a highway.

Cal. Pol. C., § 2619*. Mont. Pol. C., § 2601*.

1117. Width of public and private ways. The width of all public highways, except bridges, alleys, lanes, and trails, shall be at least sixty-six feet. The width of all private highways and by-roads, except bridges, shall be at

least twenty feet; *provided*, that nothing in this title shall be so construed as to increase or diminish the width of either kind of highway already established or used as such.

Cal. Pol. C., § 2620*. Mont. Pol. C., § 2602*.

1118. Forfeiture of franchise. Whenever the franchise of any toll bridge, trail, turnpike, or of any plank or common wagon road has expired by limitation, forfeiture, or non-user, the same becomes a free public highway, and no claim shall be valid against the public for right of way or for the land or material comprising such bridge, trail, turnpike, or plank or wagon road.

Cal. Pol. C. § 2619*.

1119. Limited highways. Where roads or streets are laid out through improved lands, and such lands are not protected by fences along the lines of the roads or streets passing through them, such roads or streets may, by the board of county commissioners of the county, be declared to be limited highways. A notice to that effect shall be posted at each end of such limited highways, and any person who shall wilfully drive any bands or herds of cattle, horses, sheep, or hogs over such roads or streets other than during the time that the abutting lands are thrown open to the public by the owners thereof for grazing purposes, shall be deemed guilty of a misdemeanor.

1120. Public and private rights in highways. By taking or accepting land for a highway, the public acquires only the right of way and incidents necessary to enjoying and maintaining it. A transfer of land bounded by a highway passes the title of the person whose estate is transferred to the center of the highway.

Cal. Pol. C., § 2631*. Mont. Pol. C., § 2620*.

Easement does not divest owner of the fee. The easement acquired by the public in a public highway vests in it the mere right of passage, and

does not divest the owner of the fee, and he may continue to make any use thereof not incompatible with the public easement.

Whitesides v. Green, 13 U. 341; 44 P. 1032.

1121. Highways in cities and towns. Where public highways extend through any incorporated town or city they shall conform to the direction and grade and be subject to all regulations of other streets in such town or city.

1122. Plats of highways. It shall be the duty of the board of county commissioners in each county immediately to determine all public highways existing in its county and to prepare plats and specific descriptions of the same and of such other highways as such board may from time to time locate upon public lands, which shall be kept on file in the office of the county clerk.

Am'd '99, p. 117.

1123. Patent subject to easement. Whenever the state shall issue its patent for any lands the same shall be made subject to the easement or right of the public to use all such highways as may have been established according to law, across the land therein described. Am'd '99, p. 118.

1124. U. S. patents. Highways. Claim for damages. Whenever any person shall acquire title from the United States to any land in this state over which there shall at such time extend any public highway that shall not theretofore have been duly platted, and that shall not have been continuously used as such for a period of ten years theretofore, he shall, within three months after receipt of his patent, assert his claim in writing for damages to the board of county commissioners of the county in which the land is situated; and said board shall have an additional period of three months in which to begin proceedings to condemn the land according to law. Such highway shall continue open as a public highway during said periods; but in case no action is begun within the period above stated by the board of county commissioners, said highway shall be deemed to be abandoned by the public. In case of a failure

by such person so acquiring title to public lands to assert his claim for damages as aforesaid, for three months from the time he shall have received a patent to such lands, he shall thereafter be barred from asserting or recovering any damages by reason of such public highway, and the same shall remain open.

N. Dak. (1895) § 1078*. See R. S. of U. S., § 2477.

1125. Sidewalks on highways. Any owner or occupant of land may construct a sidewalk on the highway along the line of his land, subject, however, to such regulations as may be prescribed by the board of county commissioners. Any person driving or riding on such sidewalk with horse or team, without permission of the owner of such sidewalk, is liable to such owner for all damage he may suffer thereby.

Cal. Pol. C., § 2632*. Mont. Pol. C., § 2621*.

1126. Trees along highways. Damages. Any owner or occupant of land adjoining a public highway may plant trees on the side of such highway contiguous to his land. Such trees must be set in regular lines at such distance from the center line of the highway as may be determined by an order of the board of county commissioners. Whoever shall wilfully or maliciously injure any of such trees shall be liable to the owner for treble the amount of damages sustained.

Cal. Pol. C., § 2633*. Bonus for planting trees on highway, § 511, sub. 17.

1127. Ditches crossing highways. Owners or users of canals or ditches which now are or hereafter may be constructed across any public highway are required to restore such highway to as good and safe condition as it was before such canal or ditch was constructed, by building a bridge or such other suitable crossing as may be determined by the board of county commissioners or the road supervisor. A failure to construct and keep in repair such bridge or crossing as and when required by the board of county commissioners shall be deemed a misdemeanor; *provided*, that nothing in this chapter shall prevent the county from keeping bridges and crossings in repair after they have been accepted by the board of county commissioners.

1128. Encroachments. If any public highway in encroached upon by a fence or building or otherwise, the road supervisor of the district may, orally or in writing, require the encroachment to be removed.

Cal. Pol. C., § 2731. Mont. Pol. C., § 2721.

1129. Id. Notice to remove. Notice must be given to the occupant or owner of the land, or person causing or owning the encroachment, or left at his place of residence, if he be known to the person giving such notice and reside in the county; if not, it must be posted on the encroachment, specifying the breadth of the highway, the place and extent of the encroachment, and requiring him to remove the same within ten days thereafter.

Cal. Pol. C., § 2732. Mont. Pol. C., § 2722.

1130. Id. Refusal. Penalty. If the encroachment is not removed or commenced to be removed, and the removal not diligently prosecuted, prior to the expiration of the ten days from the service or posting the notice, the one who caused, owns, or controls the encroachment forfeits \$10 for each day the same continues unremoved. If the encroachment is such as to effectually obstruct and prevent the use of the highway for vehicles, the road supervisor must forthwith remove the same.

Cal. Pol. C., § 2733. Mont. Pol. C., § 2723.

1131. Id. Action. If the encroachment is denied, and the owner, occupant, or person controlling the matter or thing charged with being an encroachment refuses either to remove or permit the removal thereof, the board of county commissioners must direct the county attorney to commence in the

proper court an action to abate the same as a nuisance; if judgment be recovered for the plaintiff, in addition to having the same abated, there shall also be recovered \$10 for every day such nuisance remained after notice given for its removal, and also the costs of the action.

Cal. Pol. C., § 2734. Mont. Pol. C., § 2724*.

1132. Removal without action. The board of county commissioners may at any time order the supervisor to forthwith remove any such encroachment without commencing action.

Mont. Pol. C., § 2724.

1133. Id. Penalty. If the encroachment is not denied, but is not removed for five days after the notice is complete, the road supervisor may remove the same at the expense of the owner, occupant, or person controlling the same, and recover his costs and expenses, and also for each day the same remained after notice was complete, the sum of \$10, in an action for that purpose.

Cal. Pol. C., § 2735. Mont. Pol. C., § 2725.

CHAPTER 2.

COMMISSIONERS AND SUPERVISORS.

1134. Powers of county commissioners as to highways. Each board of county commissioners shall by proper regulations:

1. Divide, where not already done, the county into a suitable and convenient number of road districts, and appoint supervisors therefor biennially or whenever vacancies occur from any cause, and remove them at pleasure;
2. Cause to be surveyed, viewed, laid out, recorded, opened, maintained, and worked, such public highways as are necessary for public convenience;
3. Abolish or abandon such public highways as are unnecessary for the use of the public;
4. Contract for, purchase, or otherwise acquire, when necessary, the right of way for a public highway over private property; and may institute proceedings for the acquirement of said right of way as provided by law;
5. Cause to be erected and maintained on such highways as they may designate, milestones or posts, and guide posts, properly inscribed;
6. Designate the public highways to be maintained by the county within or extending through each incorporated city or town; which in no case shall be more than three in the same direction.

Cal. Pol. C., § 2643*. Mont. Pol. C., § 2631*.

County board to create road districts, § 511, sub. 1; and control highways, § 511, sub. 24.

1135. Records relating to highways. The county clerk must keep a book in which must be recorded all the orders of the board of county commissioners relative to each road district, including orders for laying out, opening, and altering roads; a description of each road district, the name of its supervisors, roads, highways, contracts, and all other matters pertaining thereto.

1136. Appointment of supervisors. Supervisors of road districts shall receive notice of their appointment from the county clerk, and, within twenty days thereafter, must qualify as such by taking and subscribing the oath of office and giving a bond to the county in such sum as may be determined by