

Attorney Paul Refior and his client Jim Smith Attended the meeting, as scheduled concerning the following letter from Mr. Refior to the commissioners dated October 23, 1978:

Dear County Commissioners:

At the regular October 1978 County Commissioners meeting I requested, on behalf of Mr. Jim Smith of Mr. Jim Smith of Big Piney, Wyoming that the county grade the road by the Smith property which is located approximately ten miles north of Big Piney, Wyoming and one-quarter mile north of Muddy Creek. At that time the County Commissioners stated that there are no roads other than established county roads and "presumed county roads," that are being maintained by the county. At that time, I was of the opinion that a road is deemed to be a county road even though it was not duly established on the county records if it had been maintained by the county for a period of ten years and used by the general public for at least that length of time.

Further research into this matter leads me to a different conclusion. I am of the opinion that the conclusions of John S Mackey, County Attorney, and of V. Frank Mendicino, former Attorney General (who left office under heavy fire), concerning "presumed county roads" are in error.

The applicable statute is Section 24-1-101, Wyoming Statutes 1977. Subsection (a) of said statute reads in pertinent part as follows: "No other roads shall be highways unless and until lawfully established as such by official authority." (emphasis added).

Subsections (c) and (d) of said Section speak in terms of roads being "presumed to be public highways lawfully established." The Statute does not cause highways which have been traveled or fenced for a period of ten years or longer to become established county roads. This is vitally important. A presumption is nothing more than a rule of evidence. A presumption causes the burden of proof to change should there be a challenge to county action. However, that presumption may be overcome by evidence that the road has not ever been established as a county road by official authority.

The County Attorney concludes that the county cannot lawfully maintain a private road. As stated above, a presumed county road is not an established county road. Therefore the presumed county road must be considered in the same light as the private road. I call your attention to Page Two of the County Attorney's letter dated December 12, 1977 to Commissioners Cobb and Alexander. The County Attorney cites George W. Condon Company versus Board of County Commissioners, 56 Wyo. 38, 103 P.2d 401 (1940), correctly as authority that the Board of County Commissioners has no authority to take charge and control of a private road on behalf of the county since its powers are limited to duly established county roads. The portion of the opinion quoted by the County Attorney in said letter reads in part as follows: "But the power is limited to county roads. To be such, a road must be established by the Board."

There is additional authority for the fact that a "presumed county road" is not an established county road. The Wyoming Supreme Court recognized in Ruby versus Schuett, 360 P. 2d 170 (Wyo. 1961), that the policy of the legislature is that roads should be shown on the records.

A county road cannot be established in implication. In Board of County Commissioners, Carbon County versus White, 547 P. 2d 1195 (Wyo. 1976), The Wyoming Supreme Court cites several earlier cases for the proposition that prescriptive use is not sufficient to establish a public or county road and that this must be established by legal authority. The Court specifically states that the County Commissioners must comply with the statutory scheme for establishment of county roads in order to effect the significance of the failure of the Board to make a formal order to establish such a road. The Wyoming Court also stated that the Wyoming Statutes must be read in relation to one another. Because there is a procedure whereby county roads can be established, the county must follow the statutory procedure before a county road is an established road.

On behalf of Mr. Jim Smith, it is demanded that the county forthwith cease to maintain any roads other than established county roads. The county is in violation of the Wyoming Statutes by expending money to maintain "presumed county roads."

Mr. Smith has directed me to present to the commissioners another item of public concern. According to Mr. Smith, Mr. Dick Evans, the County Road Foreman, may be using a county vehicle and county gasoline for other than county business. Mr. Smith, as a concerned Sublette County taxpayer, requests that the commissioners investigate Mr. Evans' past and present use of county property for personal benefit.

It is requested that the commissioners place these matters upon their agenda for the November County Commissioners meeting and that I be contacted as to the time scheduled.

Thank you for your consideration in these matters.

Very respectfully,  
MASON & REFIOR, PCC.

By: /s/ Paul D. Refior  
Paul D. Refior

After some discussion Chairman Thompson told Mr. Refior "You are saying that the County Attorney, Attorney General and all the people in the past few years have made a decision that is wrong and you are right - I say there is no reason to worry about it one way or the other - you just prove it."

As for the county road foreman's using a county vehicle it was stated that the Commissioners had approved this at the time Mr. Evans was hired because he would be on call twenty-four hours a day and might not begin each working day at the county shop building in Pinedale