

ROAD ESTABLISHMENT LAWS

It seems that some people are under the impression that all state highways are 60 feet in width.

Our state highways, in most instances, were designated by Legislative or State Highway Commission Action. If at the time of designation a county road became a state highway, the State acquired ONLY whatever interest and width of right of way that had been previously established by Territorial or County action.

Territorial roads from July 1849 to May 1850 were to have been established with a width of 70 feet. By an Act of February 4, 1851, the established width of all territorial roads were to be 60 feet. The Statutes of Oregon, 1855, Page 491 stated, "The width of all territorial roads shall be 60 feet". General Laws, 1903, Page 272; Section 33 says "All territorial roads in this state are hereby declared to be county roads".

The Legislative Widths of County Roads (Extracts from Statutes in Supreme Court Library by J. W. DeSouza, Assistant Chief Counsel) are as follows:

"That public roads shall be opened twelve feet wide, clear of trees, logs, and other obstructions, the stumps cut low, and sufficient bridges and causeways; and the space of ten feet on each side of the road shall be considered as appropriated to the use of said road." Act, June 22, 1844.

"All county roads shall be 60 feet wide, unless the Commissioners of the County, upon petition should determine on a less number of feet in point of width." Twenty Acts, July 1849 - May 1850, Page 175.

"And all roads shall be 60 feet wide, unless the Commissioners of the County, upon petition, should determine on a less number of feet in point of width on any road so petitioned for." Act, February 7, 1851; same in Statutes 1854, Page 450.

"All county roads shall be 60 feet in width unless the County Court shall upon the prayer of the petitioners for the same, determine upon a different width, not less than 40 feet nor more than 80 feet in width." General Laws of Oregon 1903, Page 267, Effective May 19, 1903.

"All county roads shall be 60 feet in width, unless the County Court shall, upon the prayer of the petitioners for the same, determine upon a different width, not less than 30 feet, nor more than 80 feet in width." General Laws of Oregon 1915, Chapter 263. Effective May 19, 1915.

"The county courts in their respective counties in this State are hereby authorized and empowered to accept the right of rights of way for the construction of highways over public lands of the United States, and said rights of way shall not be less than thirty feet in width nor more than 80 feet in width as said county court shall determine, and such acceptance shall be by resolution of such county court spread upon the records of its proceedings; provided -- that nothing herein contained shall be construed to invalidate the acceptance of such grant by general public use and enjoyment, heretofore or hereafter had." Section 24, 295, General Laws of Oregon 1917.

"All county roads shall be of such width as the county shall determine, which width shall not be less than 30 feet; provided, the proposed width shall be stated in all petitions, notices, orders or resolutions relating to any such county roads." Section 44-1305, Chapter 326, Oregon Laws, 1931.

"All county roads established after the effective date of this act shall be of such width as the county court shall determine, which width shall not be less than 50 feet; provided, that the county court shall have authority to accept any dedicated circular road or street of less than 30 feet in width and not exceeding one mile in length and maintain such road or street as a county road for one-way traffic only; provided, the proposed width shall be stated in all petitions, notices, orders or resolutions relating to any such county road." Chapter 498, Oregon Laws 1947.

"All county roads established after the effective date of this Act shall be of such width as the county court shall determine, which width shall not be less than 50 feet; provided, that the county court shall have authority to accept any dedicated circular road or street of not less than 30 feet in width and not exceeding one mile in length and to maintain such road or street as a county road for one-way traffic only. The proposed width shall be stated in all petitions, notices, orders or resolutions relating to any county road." Chapter 132, Oregon Laws, 1951.

Also attached for your information is a sketch showing the Statutory County Road Widths through the years. This sketch was compiled from a report prepared by William F. Frye, Lane County District Attorney "Determining widths of existing rights-of-way for county roads".

General Laws of Oregon, 1862, "An act providing for private incorporations and appropriation of private property therefore" in Section 22 stated "Such corporation may appropriate so much of said land as may be necessary for the line of such road or canal, or the site of such bridge, not exceeding sixty feet in width, besides a sufficient quantity thereof for tollhouses, work shops, materials for construction, timber excepted, a right of way over adjacent lands to enable such corporation to construct and repair its road, canal or bridge, and to make proper drains, and in the case of railroad, to appropriate sufficient quantity of such lands, in addition to that before specified in this section, for the necessary side tracks, depots and water stations, and the right to conduct water thereto by aqueduct, but on such appropriation of private property shall be made, until compensation therefore be made to the owner thereof, irrespective to any increased value thereof, by reason of the proposed improvement by such corporation, in the manner hereinafter provided."

Another thing to consider is which came first the County Road or a Platted City Street.

At various times the question has arisen regarding the definition of Adverse Possession and Rights Acquired by Prescription. Jack Sollis gives us this definition:

"The difference between the term "adverse possession" and prescription" is as follows:"

"The term "Prescription" is most always used when either an individual or the public is acquiring a right to use real property. While this does not convey fee title to the real property it does give the individual or public or in some cases a public body the right to utilize the property for the purpose that has been carried out over the prescribed 10 year period."

"The term "Adverse Possession" relates to a situation where a person may acquire fee title to property by the use and occupancy of the property for a 10 year period. The use and occupancy must not only be open and notorious but it must also be exclusive and the area to which they are claiming fee title must have been enclosed and all other people excluded from using it. The use must also be adverse to the person owning the property."

"Thus, as you can see there are less restrictions to the acquisition of a right to use property by "Prescription" than there is to acquire fee title to the property by "Adverse Possession."

"Most of the right of ways for highways or trails are acquired by prescription and this is similar to the easement that a county acquires for county road purposes. This entitles the person claiming a right by "Prescription" to utilize that portion of the property that they have occupied or uses on a permanent basis if in fact the use and occupancy has been for a 10 year period."

Prescriptive rights, however, do not apply to Governmental property.

LAWS GOVERNING EXPENDITURES ON STATE HIGHWAYS

Act of 1917, Creating a State Highway Commission:

This Act created the State Highway Commission and the original system of State Highways, and provided for rules and regulations and the manner of constructing State Highways.

This Act required the counties to grade and drain the roadbed, and acquire the rights of way, and the State Highway Commission was required to hard-surface the sections after they had been graded by the county.

The 1921 Act provided that, to assist the counties in preparing the roadbed or paving, the counties could borrow funds from the State Highway Commission, and were to give, as security, county bonds or county warrants. The counties were still required to furnish rights of way.

These Acts of 1917 and 1921, and Acts of 1919 and 1920, providing bond issues for State Highway Construction, are still in effect, and during the period between 1919 and 1929 the counties issued large sums of money by bonds, which were expended for construction on State Highways. Many of the counties issued bonds to the constitutional limit or the county's ability to pay, and since 1929 very little cooperation on the part of the counties has been required by the Highway Commission.

Laws Regarding Acquisition of Rights of Way:

From 1917 to 1927 all rights of way required for State Highways were authorized by the counties. In 1927 the legislature passed an Act which authorized the

Highway Commission to acquire rights of way for widening and changing alignment of State Highways. The 1935 Legislative Act provided that the State could acquire all rights of way required for State Highways, or secondary State Highways, including rights of way in incorporated cities or towns. The counties could procure the rights of way, if they so desired, under the terms of this Act. The Act further provided that the Commission should confer with the county courts before proceeding with the acquisition of rights of way, and conferences were held with all counties in the State, and since 1935 all rights of way required for State Highway construction have been secured by the State Highway Commission.

Maintenance on State Highways:

From 1917 to 1921, all maintenance work on State Highways was performed by the counties, either by agreement with the State Highway Commission or the Federal Government, this procedure having been established prior to the establishment of the present form of Highway Commission in 1917. In 1921 an Act was passed providing that the maintenance of State Highways shall be under the supervision and control of the State Highway Department and at the expense of State highway funds, and further provided that any agreement or obligation in effect shall continue and may be enforced. Further, in the event that the State Highway Commission and any county court could not agree upon the terms and conditions under which the highway should be maintained, the State could proceed with the maintenance and require the county to pay one-half the cost.

This system of maintaining the State Highways continued in effect for a short period of time, but soon the State took over all maintenance.

Secondary State Highways:

By legislative enactment in 1931, a system of secondary State Highways was created. The Act provided that the construction, maintenance and repair of secondary State highways shall be carried on at the sole expense of the State or at the expense of the State and county, by mutual agreement. It also provided that the counties were to procure the rights of way. That part of the Act requiring the counties to procure rights of way was repealed by laws of 1933. By legislative enactment in 1933, the Commission was directed to set aside, out of State highway funds, for the construction, improvement, maintenance and repair of the secondary State Highway system, an amount of money which was not to be less than \$450,000 per year. This relieved the counties of any maintenance expenditures in connection with secondary highways.

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STATUTORY COUNTY ROAD WIDTHS

Jan. 27,
1854

May 21,
1889

May 22,
1915

June 6,
1931

July 5,
1947

Standard Width
Maximum Width
Minimum Width

Standard Width 60 ft.

Subject To A Maximum Width Of 80 ft.

No Standard Width Prescribed By Law
Actual Width Must Be Stated

60'

80'

40'

30'

50'

A Lesser Width
Can Be Stated

Subject To 40 ft.
Minimum

Subject To 30 ft.
Minimum

Subject To 30 ft.
Minimum

Subject To 50 ft.
Minimum

Law prescribes 60 ft. as standard width when no width is stated. Stated width controls subject to specified limits.

Law prescribes no standard width. Width of county road must be stated subject to specified minimum.

