

Opinion No. 58-87

April 28, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Joel B. Burr, Jr., Assistant Attorney General

TO: Mr. E. M. Barber, District Attorney, Seventh Judicial District, Truth or Consequences, New Mexico

QUESTION

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The County Commissioners of Sierra County, New Mexico are desirous of closing and vacating a portion of a public way in the unincorporated Village of Hillsboro, New Mexico.

1. What procedure is to be followed in vacating and closing a portion of said public way?
2. Upon the vacation and closing of said public way, does the title vest in the adjoining landowner, the original owner of the fee, or the County of Sierra?
3. If title vests in the County of Sierra, may it issue a deed of said property to the owner of all the land adjacent to and surrounding that portion of the public way to be closed?

CONCLUSION

1. See Opinion.
2. Title vests in the County of Sierra.
3. Yes

OPINION

ANALYSIS

Exhaustive research has revealed that the only statutory provision governing the procedure contemplated by the Board of County Commissioners of Sierra County is Sec. 55-4-4. It provides as follows:

"Whenever, in the opinion of the board of county commissioners of any county, any road or part of road then established and maintained as a public highway, is not needed, or the repairs of the same are burdensome and in excess of the benefits therefrom, they may at a regular meeting appoint a board of commissioners of three (3) freeholders of

the county as viewers, to view such road or part of road, and make report thereof to the board of county commissioners at their next regular meeting, setting forth fully their finding, and if they recommend a discontinuance of such road or part of road, then the board of county commissioners may order the same vacated: Provided, that if such road runs on the county line between two (2) counties, the county commissioners of both the counties interested shall appoint viewers, and the concurrence of the county commissioners of both counties shall be necessary to vacate it."

In the case of **Mandell v. Board of County Commissioners of Bernalillo County**, 44 N.M. 109, the Court held that the statutory provision quoted above was authority for the Board of County Commissioners of Bernalillo County vacating and closing a portion of a public road located in a platted area outside of the Albuquerque city limits.

Inasmuch as the Village of Hillsboro is an unincorporated municipality, any action in closing and vacating a portion of a public street located within the boundaries of the Village would have to be done by the county commissioners. We feel that the factual situation in the **Mandell** case is almost identical with the facts as outlined in your inquiry and is, therefore, authority for the action contemplated by the County Commissioners of Sierra County.

Turning to the second question, the general rule is to the effect that where the absolute and unqualified fee is in the municipality or other public agency, it divests the original owner of its entire interest so that upon discontinuance of the way as such the title does not revert to the grantor or abutting owner but remains in the municipality or other agency unaffected by the vacation. 25 Am. Jur. 128, 18 A. L. R. 1009.

In view of the general rule quoted above, Sec. 14-2-10, N.M.S.A., 1953 Comp., becomes material. It provides:

"All avenues, streets, alleys, parks and other places designated or described as for public use on the map or plat of such county, shall be deemed to be public property and the **fee thereof** be vested in the county, and the acknowledgment and recording of such plat shall operate as a dedication to the public use of such portion of the premises platted as is on such plat set apart for streets or other public use." (Emphasis ours)

We, therefore, hold that upon vacating and closing the public way in question, title to the property remains in the County of Sierra.

Among other powers granted to counties in Sec. 15-36-1, N.M.S.A., 1953 Comp., is the following:

"To sell and convey any real or personal estate owned by the county and make such order respecting the same as may be deemed conducive to the interests of the inhabitants."

It is evident then from a reading of the above quoted provision that the County of Sierra may issue a deed, if it so desires, to the owner of all the land adjacent to and surrounding the property in question. It should be noted, however, that Art. IX, Sec. 14, of the New Mexico Constitution, would require some consideration for such a conveyance.