

Opinion No. 25-3844

August 5, 1925

BY: JAMES N. BUJAC, Assistant Attorney General

TO: Requested by: Hon. Dillard H. Wyatt, District Attorney, Fifth Judicial District, Roswell, New Mexico.

Roads dedicated to public use, that have not been vacated or abandoned, and have been used for a long period of years are Public Highways.

OPINION

Your request is as follows:

"I have been requested by the Chairman of the Board of County Commissioners of Chaves County, New Mexico, to ask for your opinion as to whether or not a right of way for public highway may be obtained by adverse use of ten years."

§ 2626, New Mexico Statutes, Annotated, Codification of 1915, provides:

"All roads and highways, except private roads, established in pursuance of any law of New Mexico, and roads dedicated to public use, that have not been vacated or abandoned, and such other roads as are recognized and maintained by the corporate authorities of any county in New Mexico, are hereby declared to be public highways."

In Opinion No. 2345, dated August 26, 1919, and reported at page 62, Report and Opinions of the Attorney General, 1919-20, the Hon. N. D. Meyer held that roads dedicated to public use, that have not been vacated or abandoned, and have been used for a long period of years are public highways even though such roads were not established by the laws of the Territory or State of New Mexico. In other words that the long continued use of a road by the public would be sufficient to constitute such road a public highway. This ruling appears to be a sound and just one and in accordance with law and therefore I concur with Mr. Meyer in the premises.