

Chapter 368

County Roads

Chapter 368

NOTES OF DECISIONS

Proceedings under this chapter are analogous to inverse condemnation proceedings. *Hewitt v. Lane County*, (1969) 253 Or 669, 456 P2d 967.

Attorney fees will be allowed to the landowner who "must seek his remedy in court," if he prevails in proceedings under this chapter. *Boggs v. Multnomah Co.*, (1970) 2 Or App 517, 470 P2d 159.

368.005

CASE CITATIONS: *Salem v. Marion County*, (1894) 25 Or 449, 36 P 163; *Andrews v. Neil*, (1912) 61 Or 471, 120 P 383, 123 P 163; *Leffingwell v. Lane County*, (1913) 64 Or 144, 129 P 538; *Re Petition of Reeder*, (1924) 110 Or 484, 222 P 724.

ATTY. GEN. OPINIONS: Authority of county court as to construction and repairs of road district roads, 1950-52, p 332.

368.010

ATTY. GEN. OPINIONS: Construing "public road," 1966-68, p 412.

368.055

ATTY. GEN. OPINIONS: Requirement that county engineer be a licensed professional engineer, 1928-30, p 274; authority of county commissioners to delegate duties of roadmaster or engineer to one of their members, and pay him out of road funds, 1940-42, p 560.

368.070

ATTY. GEN. OPINIONS: County surveyor as custodian of papers and records relating to roads upon termination of proceedings, 1940-42, p 447.

368.080

ATTY. GEN. OPINIONS: Appointment of road supervisors, 1924-26, p 164; requirement that roadmaster be a licensed engineer, 1928-30, p 274; authority of commissioners to delegate to member duties of county road engineer and pay him out of road funds, supervision of county road work by commissioners, 1940-42, p 560; requirement that roadmaster be a licensed engineer, 1962-64, p 85.

368.095

NOTES OF DECISIONS

The jurisdiction of the county court over county roads is exclusive. *Cooper v. Fox*, (1918) 87 Or 657, 171 P 408.

ATTY. GEN. OPINIONS: Duties of county roadmaster,

1932-34, p 164; requirement that roadmaster be a licensed engineer, 1962-64, p 85; cost account for road funds, in counties with auditors, (1970) Vol 35, p 1.

368.105

NOTES OF DECISIONS

A former similar section did not violate Ore. Const. Art. I, §17, because it authorized the county court to assess the damages without a trial by jury. *Kendall v. Post*, (1879) 8 Or 141.

FURTHER CITATIONS: *Cherry v. Matthews*, (1894) 25 Or 484, 36 P 529.

368.205

NOTES OF DECISIONS

The county was the proper party defendant in a proceeding to review the action of its county court as to a highway. *Fisher v. Union County*, (1903) 43 Or 223, 72 P 797.

The state's power is paramount to any of its subordinate arms of government until by its own action it surrenders its authority over roads and highways. *Cole v. City of Seaside*, (1916) 80 Or 73, 156 P 569.

In determining whether a way in a city is a street or a county road, resort must be had to the intention of the legislature gathered from the whole course of legislation on the subject. *Id.*

The jurisdiction over county roads was exclusively in the county court, and could not be interfered with by a municipality. *Cooper v. Fox*, (1918) 87 Or 657, 171 P 408.

Commissioner's claim should have been itemized and filed with the clerk before the county court had authority to allow it. *State v. Haner*, (1927) 123 Or 301, 261 P 81.

To be entitled to a per diem for inspecting roads and bridges, the commissioner exercising the power should have been designated by the court. *Id.*

An allowance of \$5 per day to the county commissioner for supervising county roads was proper. *Gosso v. Riddell*, (1927) 123 Or 57, 261 P 77.

Ratification of an oral agreement with the county court as to payment was shown by the allowance of a claim of a commissioner for supervising work on a county road. *Id.*

FURTHER CITATIONS: *Oregon Ry. and Nav. Co. v. Hertzberg*, (1894) 26 Or 216, 37 P 1019; *Postal Telegraph Co. v. State Hwy. Comm.*, (1921) 276 Fed 958.

ATTY. GEN. OPINIONS: Authority of taxpayers of road district to impose conditions upon county court in management of work on county roads, 1922-24, p 300; authority of county court to establish roads over property of state institutions, 1924-26, p 78; authority of court to require bond of truck owner or driver for possible road or bridge damage, 1940-42, p 199; authority of county to help maintain city streets, unless expressly accepted as county roads, 1940-42, p 207; supervision of county road work by commissioners, 1940-42, p 560; responsibility of county court to repair irri-

gation structures across county roads, 1950-52, p 242; county court consenting to annexation of county road by city, 1950-52, p 261; authority of city to install parking meters on county road, 1950-52, p 311.

LAW REVIEW CITATIONS: 46 OLR 251, 263.

368.210

CASE CITATIONS: Killam v. Multnomah County, (1931) 137 Or 562, 4 P2d 323.

ATTY. GEN. OPINIONS: Authority to abate or enjoin nuisance upon public highways, 1924-26, p 383; streets in unincorporated town as county highways and the jurisdiction of the county court regardless of the fact that such streets have not been accepted as county roads, 1944-46, p 15; county court's power to make their approval of plats conditional, 1948-50, p 444; right of county to timber growing on dedicated streets, 1964-66, p 10.

LAW REVIEW CITATIONS: 46 OLR 251, 263.

368.235

NOTES OF DECISIONS

A surety who paid labor and material claims on default of the contractor was entitled to be subrogated as against the assignee. Wasco County v. New England Ins. Co., (1918) 88 Or 465, 172 P 126.

368.245

ATTY. GEN. OPINIONS: Payment of retainages after 1969 amendment, (1969) Vol 34, p 839.

368.275

LAW REVIEW CITATIONS: 46 OLR 129, 131.

368.280

LAW REVIEW CITATIONS: 46 OLR 129, 141, 142.

368.285

LAW REVIEW CITATIONS: 46 OLR 154.

368.290

ATTY. GEN. OPINIONS: Effect of railroad right of way within public highway right of way, 1960-62, p 102.

368.405 to 368.540

LAW REVIEW CITATIONS: 46 OLR 125-158.

368.405

NOTES OF DECISIONS

This section is not unconstitutional as taking property without due process of law. Latourette v. Clackamas County Court, (1929) 131 Or 168, 281 P 182.

When the use by the public has exceeded the period prescribed by the statute of limitations for the recovery of real property, it will be regarded as sufficient evidence of a highway independently of any dedication. Huggett v. Moran, (1954) 201 Or 105, 266 P2d 692.

FURTHER CITATIONS: Grigsby v. Miller, (1933) 144 Or 551, 25 P2d 908; Re Petition of Reeder, (1924) 110 Or 484,

222 P 724; Colombo v. Hewitt, (1960) 221 Or 121, 350 P2d 893; Hoffarber v. Gleason, (1966) 244 Or 49, 415 P2d 518.

ATTY. GEN. OPINIONS: Acquisition of public way by common law dedication, 1950-52, p 86; invalidity of establishing or accepting by deed a county road other than as prescribed by statute, 1950-52, p 377; constructing sidewalks on county right of way within limits of city, 1954-56, p 156; status of 1913 road declared a "public highway," 1966-68, p 230; establishment of a county road by public use and maintenance by county for over 10 years, 1966-68, p 326; acts constituting acceptance of a road as a county road, (1969) Vol 34, p 868.

368.415

CASE CITATIONS: Montgomery v. Somers, (1907) 50 Or 259, 90 P 674; Latourette v. Clackamas County Court, (1927) 121 Or 323, 255 P 330.

ATTY. GEN. OPINIONS: Prospective application of this section, 1948-50, p 398; constructing sidewalks on county right of way within limits of city, 1954-56, p 156; minimal requirements for approval of plats, 1960-62, p 409; application of width requirement to road obtained by prescription, 1966-68, p 230.

368.425

CASE CITATIONS: Killam v. Multnomah County, (1931) 137 Or 562, 4 P2d 323.

ATTY. GEN. OPINIONS: Right of county to timber growing on dedicated streets, 1964-66, p 10.

368.430

NOTES OF DECISIONS

1. Under former similar statute

Where the terminal points of a road alteration were not described in the petition it was insufficient to give the court jurisdiction under former provisions. Johns v. Marion County, (1870) 4 Or 46.

The denial of a petition was not conclusive and did not bar a subsequent proceeding to establish a road over the same route. Kamer v. Clatsop County, (1877) 6 Or 238.

To appropriate a toll road to public use, a petition was required as in ordinary cases. Little Nestucca Road Co. v. Tillamook County, (1897) 31 Or 1, 48 P 465, 65 Am St Rep 802.

A finding that petitioners were qualified freeholders was equivalent to a finding that persons who signed the road notice were qualified petitioners. Jensen v. Curry County, (1909) 55 Or 54, 105 P 96.

The presence of a rejected name did not invalidate a petition where a sufficient number of names of qualified petitioners remained. Giesy v. Marion County (1919) 91 Or 450, 178 P 598.

The procedure in condemnation suits did not apply to the establishment of county roads by petition. Re Petition of Reeder, (1924) 110 Or 484, 222 P 724.

FURTHER CITATIONS: Fisher v. Union County, (1903) 43 Or 223, 72 P 797; Christensen v. Lane County, (1918) 90 Or 401, 175 P 845.

ATTY. GEN. OPINIONS: Location of property owned by signer of petition, 1920-22, p 330; minor not qualified to sign road petition, 1920-22, p 330; homesteader as a freeholder within statute, 1920-22, p 330.

368.435

NOTES OF DECISIONS

A petition praying that the court "locate and establish" a road, instead of asking to have the road "laid out," was not on that account insufficient. *Feagins v. Wallowa County*, (1912) 62 Or 186, 123 P 902.

A petition not definitely stating the intermediate points was not fatally defective, where the points of beginning and termination were definitely described. *Id.*

If the description and statement of public necessity as required by this section were not included in the court's resolution as provided in ORS 368.470, the court did not acquire jurisdiction. *Latourette v. Clackamas County Court*, (1927) 121 Or 323, 255 P 330.

FURTHER CITATIONS: *Sime v. Spencer*, (1897) 30 Or 340, 47 P 919; *Morton v. Hood River County*, (1918) 88 Or 144, 171 P 584.

368.445

NOTES OF DECISIONS

1. Under former similar statute

Copies, rather than originals, of notices could be posted. *Vedder v. Marion County*, (1892) 22 Or 264, 268, 29 P 619.

A variance between the petition and notice in stating the township in which a road was to be vacated was fatal to the jurisdiction of the court. *Fisher v. Union County*, (1903) 43 Or 223, 72 P 797.

Notices posted September 3, reciting that application would be made to the court October 3, were posted only 29 days and the court did not acquire jurisdiction. *Rynearson v. Union County*, (1909) 54 Or 181, 102 P 785.

An appeal from the assessment of damages sustained by landowners did not involve the question of the regularity of notice which was reviewable only by writ of review. *Re Petition of Reeder*, (1924) 110 Or 484, 222 P 724.

It was sufficient to mail notices to record owners of property as shown by the records of the tax collector; it was not necessary to consult the records of the probate court for the purpose of ascertaining the names of heirs of deceased owners. *Latourette v. Kruse*, (1932) 139 Or 422, 10 P2d 592.

FURTHER CITATIONS: *Hoffarber v. Gleason*, (1966) 244 Or 49, 415 P2d 518.

ATTY. GEN. OPINIONS: Time for posting notice, 1920-22, p 106; notice to property owners of proposed action in laying out or relocating a county road, 1928-30, p 164, 1934-36, p 88; jurisdiction of court when viewers appointed by the court failed to file their reports within the statutory period, 1936-38, p 184.

368.470

NOTES OF DECISIONS

1. In general
2. Resolution
3. Notice
4. Posting
5. Evidence
6. Damages

1. In general

Mere irregularities after the court acquires jurisdiction by lawful resolution and notice will not nullify the subsequent proceedings. *Lauderback v. Multnomah County*, (1924) 111 Or 681, 226 P 697.

The county court acts in the capacity of a public tribunal, not as a private party, where proceedings are instituted by

its resolution, instead of by petition. *Latourette v. Clackamas County Court*, (1929) 131 Or 168, 281 P 182.

The county court is an impartial tribunal, and can hear and determine all questions arising without being subject to the imputations of any private or personal interests in the result of the proceedings, where acting under a resolution. *Id.*

The same presumption attaches to the action of the county court as would attach if the proceedings had been instituted by petition of the freeholders. *Id.*

2. Resolution

A description of the manner in which a road is to be changed, and the public necessity therefor, must be included in the resolution of a court to alter a road. *Latourette v. Clackamas County Court*, (1927) 121 Or 323, 255 P 330.

Where the description in the resolution was insufficient and no public necessity was stated, no jurisdiction was acquired. *Id.*

3. Notice

A county cannot deprive individuals of their land without due process of law which requires notice and a right to be heard. *Lauderback v. Multnomah County*, (1924) 111 Or 681, 226 P 697.

Only the tax collector's records need be searched in determining who should be given notice of court's resolution; probate court records need not be consulted. *Latourette v. Kruse*, (1932) 139 Or 422, 10 P2d 592.

4. Posting

Jurisdiction was acquired by the court only upon posting notices in four public places. *Lauderback v. Multnomah County*, (1924) 111 Or 681, 226 P 697.

Where commissioners' signatures were not on notices posted there was an insufficient compliance with the statute. *Id.*

Posted notice of resolution need not be at either end of the proposed road; posting at the courthouse and in three public places in the vicinity of the road was sufficient. *Id.*

Two notices for the location of a three and one-half mile road which were posted 60 feet apart but on opposite sides of the road constituted virtually a posting in "one place." *Id.*

Where the notice was posted in such manner that the clerk's attestation was concealed, the notice was insufficient. *Id.*

Pleadings as to posting notice of resolution showed that the county court never acquired jurisdiction. *Id.*

5. Evidence

Negative testimony that witnesses did not see a notice of a resolution was material and of probative value in a suit to enjoin further proceedings. *Lauderback v. Multnomah County*, (1924) 111 Or 681, 226 P 697.

A journal entry to aid insufficient proof of posting of notices of resolution must be based on competent evidence of record. *Id.*

Evidence showed that the posted notice of the court's resolution was duly authenticated by county clerk's signature. *Latourette v. Kruse*, (1932) 139 Or 422, 10 P2d 592.

6. Damages

Where the owner did not appeal from the order of the county court approving damages assessed by viewers where land was taken by resolution of court, he could not recover any additional damages. *Cousin v. Clackamas County*, (1926) 118 Or 412, 247 P 138.

Though the land taken was not included within the boundaries described in the resolution, the owner of such land could recover its value and damages resulting to the remainder of the land. *Id.*

In an action for damages for wrongful appropriation, an answer omitting an allegation that the required resolution had been adopted and notices posted was vulnerable to a general demurrer. *Kerns v. Couch*, (1932) 141 Or 147, 12 P2d 1011, 17 P2d 323.

A judgment assessing damages was invalid where the county court confined its consideration to the claim filed and to a report of the viewers wherein no assessment of damages was made. *Id.*

FURTHER CITATIONS: *Colombo v. Hewitt*, (1960) 221 Or 121, 350 P2d 893.

ATTY. GEN. OPINIONS: Proceedings to vacate road upon which abandoned bridge is located, 1936-38, p 132; property owner may file appeal within 20 days from adoption by county court of report relocating county road, 1942-44, p 149.

368.475

CASE CITATIONS: *Hewitt v. Lane County*, (1969) 253 Or 669, 456 P2d 967.

368.480

NOTES OF DECISIONS

Under a former similar section, the court was not required to follow a favorable report of the viewers unless it was satisfied that the proposed road would be a public utility. *Vedder v. Marion County*, (1895) 28 Or 77, 36 P 535, 41 P 3.

Under a former similar section, the court could set aside the report of viewers and reappoint them or others to view and resurvey the proposed road. *Jones v. Polk County*, (1900) 36 Or 539, 60 P 204.

Where a holiday was prescribed for the day for filing a report of viewers, the report could be filed the next day. *Rice v. Douglas County*, (1919) 93 Or 551, 183 P 768.

FURTHER CITATIONS: *Beekman v. Jackson County*, (1890) 18 Or 283, 22 P 1074; *Fanning v. Gilliland*, (1900) 37 Or 369, 61 P 636, 62 P 209; *Arstill v. Hare*, (1918) 89 Or 128, 173 P 571; *Kerns v. Couch*, (1932) 141 Or 147, 12 P2d 1011, 17 P2d 323; *Brink v. Multnomah County*, (1960) 224 Or 507, 365 P2d 536.

ATTY. GEN. OPINIONS: Effect of signing road petition upon claim by petitioner for damages for a road through his land, 1920-22, p 330; jurisdiction of court when viewers fail to file reports, 1936-38, p 184.

368.485

NOTES OF DECISIONS

The purpose of a former similar provision was to inform those particularly interested and the public generally of the action which was recommended, and additional notice at each step taken by the court was unnecessary. *Heuel v. Wallowa County*, (1915) 76 Or 354, 149 P 77.

ATTY. GEN. OPINIONS: Construing "next regular term" of county court for reading report of county road viewers, 1964-66, p 428.

368.490

NOTES OF DECISIONS

Where there was an absence of notice, a person could not be deprived of his right to file a petition for damages. *Lauderback v. Multnomah County*, (1924) 111 Or 681, 689, 226 P 697.

FURTHER CITATIONS: *Hoffarber v. Gleason*, (1966) 244 Or 49, 415 P2d 518.

368.495

NOTES OF DECISIONS

1. Under former similar statute

Where the report was adopted but the court refused to establish the road as a public highway unless the petitioners first paid the damages, it in effect declared that the road had not sufficient public utility to require the county to pay such damages. *Hammer v. Polk County*, (1888) 15 Or 578, 580, 16 P 420.

Where a remonstrance was filed the court could not make a final order until the remonstrance was disposed of. *Feagins v. Wallowa County*, (1912) 62 Or 186, 123 P 902.

The county court was the final judge of the utility of a proposed road. *Morton v. Hood River County*, (1918) 88 Or 144, 171 P 584.

FURTHER CITATIONS: *St. Benedict's Abbey v. Marion County*, (1908) 50 Or 411, 93 P 231; *Palmer Lbr. Co. v. Wallowa County*, (1911) 60 Or 342, 118 P 1013; *Heuel v. Wallowa County*, (1915) 76 Or 354, 149 P 77; *Re Petition of Reeder*, (1924) 110 Or 484, 222 P 724.

ATTY. GEN. OPINIONS: Filing appeal by property owner within 20 days from adoption by county court of report relocating county road, 1942-44, p 149.

368.510

NOTES OF DECISIONS

The commissioners are not required to give notice of the hearing and of the plaintiff's right to appeal within 20 days thereafter. *Hoffarber v. Gleason*, (1966) 244 Or 49, 415 P2d 518.

368.515

NOTES OF DECISIONS

Under a former similar section, attorney's fees were not recoverable. *Re Petition of Reeder*, (1924) 110 Or 484, 222 P 724.

FURTHER CITATIONS: *Kerns v. Couch*, (1932) 141 Or 147, 12 P2d 1011, 17 P2d 323.

368.525

NOTES OF DECISIONS

Under a former similar section, the circuit court could not remand the case to the county court, but was required to render such judgment as the parties were entitled to. *McCall v. Marion County*, (1903) 43 Or 536, 73 P 1030, 75 P 140.

An appeal to the circuit court was abandoned where more than two years and three months had elapsed without securing an order allowing the appeal or perfecting the appeal. *Latourette v. Kruse*, (1932) 139 Or 422, 10 P2d 592.

This section should be read with ORS 20.085, authorizing reasonable attorney fees to be allowed a landowner. *Hewitt v. Lane County*, (1969) 253 Or 669, 456 P2d 967; *Boggs v. Multnomah County*, (1970) 2 Or App 517, 470 P2d 159.

An allowance of attorney fees is permissible if there is evidence to support the amount. *Manifold Business & Inv. Inc., v. Multnomah County*, (1970) 255 Or 225, 465 P2d 710.

The findings of the trial court are binding on the appellate court if there is evidence to support them. *Ungers' Co. v. Lincoln County*, (1971) 5 Or App 270, 483 P2d 81, Sup Ct review denied.

This proceeding is in the nature of an action at law. *Id.*

FURTHER CITATIONS: *Leader v. Multnomah County*, (1892) 23 Or 213, 31 P 481; *Fanning v. Gilliland*, (1900) 37 Or 369, 61 P 636, 62 P 209; *Miller v. Union County*, (1906) 48 Or 266, 86 P 3; *Re Petition of Reeder*, (1924) 110 Or 484, 222 P 724; *Huber v. Multnomah County*, (1962) 230 Or 146, 368 P2d 84; *Hoffarber v. Gleason*, (1966) 244 Or 49, 415 P2d 518; *Selbee v. Multnomah County*, (1967) 247 Or 390, 430 P2d 561.

ATTY. GEN. OPINIONS: Appeal by property owner within 20 days from adoption by county court of report relocating county road, 1942-44, p 149.

368.530

CASE CITATIONS: *Arstill v. Hare*, (1918) 89 Or 128, 173 P 571; *Rice v. Douglas County*, (1919) 93 Or 551, 183 P 768.

368.535

NOTES OF DECISIONS

Jurisdictional questions cannot be reviewed upon appeal; a writ of review is necessary to consider them. *Re Petition of Reeder*, (1924) 110 Or 484, 222 P 724.

Unless injustice has been done to a party interested, mere irregularities are not sufficient to reverse an order establishing a road. *Latourette v. Clackamas County Court*, (1927) 121 Or 323, 255 P 330.

FURTHER CITATIONS: *Kerns v. Couch*, (1932) 141 Or 147, 12 P2d 1011, 17 P2d 323.

368.540

NOTES OF DECISIONS

The "old road" is vacated by final order only when the new, replacing highway leaves reasonably adequate means of ingress and egress to the owners of property abutting on the road to be vacated. *Colombo v. Hewitt*, (1960) 221 Or 121, 350 P2d 893.

An order of the county court, nunc pro tunc, vacating an old road, which presumably was the intention of the court 21 years earlier although they took no action, was invalid. *Id.*

368.546

ATTY. GEN. OPINIONS: Regarding applicability to platted tracts outside towns, 1940-42, p 385; county court's power to make their approval of plats conditional, 1948-50, p 444; procedure and time restrictions for conversion of public highways into county roads, 1948-50, p 355; liability of county and its officials for damages arising from public way not formally accepted by the county, 1950-1952, p 86; power of county to require permit for use of dedicated unaccepted road, 1950-52, p 16; invalidity of establishing or accepting by deed a county road other than as prescribed by statute, 1950-52, p 377; rights and duties of owner of lots abutting on unimproved dedicated street to bulldoze down and cut timber on dedicated streets in order to reach his property, 1952-54, p 110; rights and duties of county court where property owner bulldozes down and cuts timber on unimproved dedicated streets in order to reach his property, 1952-54, p 110; establishment of a county road by public use and maintenance by county for over 10 years, 1966-68, p 326; acts constituting acceptance as a county road, (1969) Vol 34, p 868; duty of court to remove obstructions in public roads, (1969) Vol 34, p 907.

LAW REVIEW CITATIONS: 20 OLR 157.

368.551

ATTY. GEN. OPINIONS: Construing procedures to vacate streets outside cities, 1960-62, p 225; ownership of streets in a city, 1960-62, p 311; minimal requirements for approval of plats, 1960-62, p 409; establishment of a county road by public use and maintenance by county for over 10 years, 1966-68, p 326; use of State Highway Fund money except on county roads, 1966-68, p 571; acts constituting acceptance as a county road, (1969) Vol 34, p 868; duty of court to remove obstructions in public roads, (1969) Vol 34, p 907.

368.555

ATTY. GEN. OPINIONS: Authority to expend funds to construct highway over Indian reservation, 1924-26, p 173.

368.560

ATTY. GEN. OPINIONS: Procedure and time restrictions for conversion of public highways into county roads, 1948-50, p 355.

368.565

NOTES OF DECISIONS

Failure to enter a resolution in the journal of the court at the time of its adoption was a mere irregularity which did not render the proceeding void. *Holmes v. Graham*, (1938) 159 Or 466, 80 P2d 870.

FURTHER CITATIONS: *Holland v. Grant County*, (1956) 208 Or 50, 298 P2d 832.

ATTY. GEN. OPINIONS: Power of county court to grant easement for irrigation ditch on the right of way of a county road, 1950-52, p 326; construing procedures to vacate streets outside cities, 1960-62, p 225.

368.575

NOTES OF DECISIONS

A notice posted September 3 reciting that application to vacate would be made on October 3, was posted only 29 days. *Rynearson v. Union County*, (1909) 54 Or 181, 102 P 785.

FURTHER CITATIONS: *Gaines v. Linn County*, (1891) 21 Or 425, 28 P 131.

368.580

NOTES OF DECISIONS

A writ of review, not a suit in equity to set aside the county court's proceedings and an appeal from a decree denying such relief, was the proper remedy of owners of land abutting on a vacated county road. *Holmes v. Graham*, (1938) 159 Or 466, 80 P2d 870.

The plaintiffs had ample opportunity to present objections and to have had their day in court in a proceeding to vacate a road upon resolution. *Id.*

368.585

NOTES OF DECISIONS

The purpose of the road legalization statutes is to remedy a situation where there are discrepancies between the road described in the original survey and the road in fact, by resurveying the existing road and conforming the official records to reflect its course. *Ungers' Co. v. Lincoln County*, (1971) 5 Or App 270, 483 P2d 81, Sup Ct review denied.

ATTY. GEN. OPINIONS: County roads as affected by adverse possession, 1944-46, p 435; determination of location of public way acquired by statutory dedication, 1950-52, p 86.

368.600

NOTES OF DECISIONS

An order of the county court appointing viewers does not affect a claim for damages filed thereafter. *Kerns v. Couch*, (1932) 141 Or 147, 12 P2d 1011, 17 P2d 323.

FURTHER CITATIONS: *Ungers' Co. v. Lincoln County*, (1971) 5 Or App 270, 483 P2d 81, Sup Ct review denied.

LAW REVIEW CITATIONS: 46 OLR 128.

368.620

CASE CITATIONS: *Colombo v. Hewitt*, (1960) 221 Or 121, 350 P2d 893; *Hislop v. County of Lincoln*, (1968) 249 Or 259, 437 P2d 847.

368.705

NOTES OF DECISIONS

I. Under former similar statute

It was discretionary with the county court to make the levy. *Kime v. Thompson*, (1911) 60 Or 183, 118 P 174.

The contention that there was no intention to provide revenue to maintain city streets was precluded by the section. *City of Astoria v. Cornelius*, (1925) 119 Or 264, 240 P 233.

This section was mandatory both as to collection and disposition of the tax provided for. *Id.*

The failure of a county court to levy a tax required by this section could not render the county liable for the amount that might have been received and apportioned to a city had it been levied. *City of Pendleton v. Umatilla County*, (1926) 117 Or 140, 241 P 979.

A former similar section was not invalid as a local law within Ore. Const. Art. IV, §23. *Id.*

FURTHER CITATIONS: *Cooper v. Fox*, (1918) 87 Or 657, 171 P 408; *State v. Phipps*, (1931) 136 Or 454, 299 P 1009.

ATTY. GEN. OPINIONS: Duty of county court of county having population less than 25,000 to levy tax, 1922-24, p 609; acceptance of county warrants in payment of tax,

1924-26, p 121; exclusive method for levying taxes for county road purposes, 1924-26, p 415; correction of erroneous tax levy, 1926-28, p 101; distribution of road tax where reclamation district is formed into separate road districts, 1926-28, p 208; requirement that county court purchase machinery and equipment from road fund and not from general funds, 1928-30, p 370; return to general fund of moneys received by county for use of equipment or material purchased from general road fund, 1928-30, p 585; mandamus to compel county court to levy tax for general road fund, 1932-34, p 102; taxes levied for road purposes only, and revenues as distributed upon same basis as taxes are required to be apportioned, 1934-36, p 174; authority of county court to require officials of incorporated city or town to improve and repair county road within such municipality, 1934-36, p 563; method of determining tax base for the constitutional limitation, 1954-56, p 127; paying additional compensation to district attorneys from county road funds, 1956-58, p 201; authority for a serial levy for county roads, 1964-66, p 393; construing "boating facilities," 1964-66, p 410.

LAW REVIEW CITATIONS: 4 WLJ 476.

368.710

NOTES OF DECISIONS

No judicial function reviewable by a writ of review is exercised by the county court in apportioning road taxes due a city under this section. *Oregon City v. Clackamas County*, (1926) 118 Or 546, 247 P 772.

FURTHER CITATIONS: *State v. Malheur County*, (1949) 185 Or 392, 203 P2d 305.

ATTY. GEN. OPINIONS: Transfer of funds from the general road fund to the general fund, election division, 1948-50, p 188; transfer of funds from the road fund to the general fund, 1948-50, p 241.

368.715

ATTY. GEN. OPINIONS: Use of State Highway Fund money except on county roads, 1966-68, p 571.

368.805

ATTY. GEN. OPINIONS: Authority to spend county funds on Bureau of Land Management roads, 1966-68, p 412.