

January 10, 2007

Mr. Wyatt Glade  
Custer County Attorney  
1010 Main Street  
Miles City, Montana 59301

Re: County Road Acquisition

Dear Mr. Glade:

You have requested an opinion of this office interpreting Mont. Code Ann. § 7-14-2101(3)(a), which provides: “Following a public hearing, a board of county commissioners may accept by resolution a road that has not previously been considered a county road but that has been laid out, constructed, and maintained with state department of transportation or county funds.” Your question is whether this statute allows a county to accept a road if state or county money has not been “totally responsible for laying out, constructing and maintaining the road.” Since your question has a clear answer in the terms of the statute a letter of advice rather than a formal opinion has been determined to be the appropriate response.

The legislative history of the bill that added the pertinent language to the statute in 1999 is unhelpful with respect to the question you raise. However, the language of the statute appears reasonably clear. It does not say that the funding to lay out, construct, and maintain the road must have been provided *solely* by the state or county. By its terms it merely requires that state department of transportation or county funds have been used for those purposes.

In construing a statute the plain meaning of the words used controls. A construing court may not add what has been omitted or delete what has been inserted. Mont. Code Ann. § 1-2-101; Glendive Medical Center v. Montana Dep’t of Pub. Health and Human Servs., 2002 MT 131, ¶ 15, 310 Mont. 156, 160, 49 P.3d 560, 562 (“The function of the court with respect to statutory construction is to interpret the intention of the statute or rule, if at all possible, from the plain meaning of the words, and if the meaning of the statute or rule can be determined from the language used, the court is not at liberty to add or to

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detract from the language therein.”) The legislature did not require that a road have been laid out, constructed, and maintained solely by state or county funds as a condition precedent to the county’s acceptance of the road.

It would be my opinion that any expenditure of state or county funds for the layout, construction, and maintenance of a road would make the road eligible for acceptance as a county road under Mont. Code Ann. § 7-14-2101(3)(a). I hope you find this helpful. This letter of advice may not be cited as an official opinion of the Attorney General.

Sincerely,

CHRIS D. TWEETEN  
Chief Civil Counsel

cdt/jym