

7. At the hearing, the board of supervisors considers the feasibility and necessity of the highway sought to be established. If the board determines the proposed highway is a public necessity, it may approve the establishment of the highway by resolution, and may accept any right-of-way or property donated to the county. The resolution also directs the acquisition of any necessary right-of-way.

Note: Determination by the Board of the public necessity, allows it to establish the petitioned roadway by resolution. This resolution also directs the acquisition of right-of-way.

At the completion of the statutory requirements listed in the above steps, the board of supervisors is enabled to spend public funds for rights-of-way acquisition, construction, and maintenance of the described segment of a county highway.

Establishment by Use

Many roads and highways that exist on both county and state systems began as simple trails meandering between points of desired travel and follow a direction based on ease of negotiating terrain. In the early days of the settlement of Arizona, very little land was in described private ownership. Since land values were very low, formal road rights-of-way were not even conceived. Continued settlement brought about the homestead acts and, eventually, barbed wire to define property. Land values increased and it became necessary to provide for the right of the public to reserve travel routes and public access to land parcels. At first, homesteaded parcels had no easements or public ways reserved for access to individual parcels.

As the need was recognized, the Federal Government began requiring 33 feet along all section lines and sometimes along half-section lines as public easements. (33 feet equals one-half of the length of a surveyor's chain.) This provision provided a roadway right-of-way width of 66 feet (one surveyor's chain). However, because of topography, a practical road route could not always follow a section line. Therefore, road routes came into being through constant use by the public.

Due to the growing settlements and increased use, particularly with the advent of the motorized vehicle, the state legislature enacted laws in 1927 which established public rights to those roads that had been in open use for a period of two years (A.R.S. §28-7042. Subsequent legislation has provided that all highways, roads or streets that have been in constant use for ten years or more prior to January 1, 1960 are declared public highways (Section 28-7041, Paragraph B).

The 1927 Act stipulated such declared roads to be 66 feet wide; however, the 1960 Act is silent on width. As a result of this silence, considerable litigation has occurred at specific locations in determining the public's specific rights as to the width of right-of-way. In general, the courts have held that the public's right to use is restricted to the actual traveled roadbed width. (This should be interpreted to include drainage ditches.)

In modern practice, it is wise, when encountering such "establishment by use" roads or highways, to clarify the legal standing by reestablishment through board of supervisor action; and, if appropriate, to