

Procedure for Vacation and Abandonment of County Roads

Attached is the Nebraska State Statute on Vacation and Abandonment
(§39-1722 through §39-1731)

§39-1722: This statute explains what needs to be done if you wish to close or abandon a county road.

1. Legal description of road proposed to be vacated or abandoned.
2. Reason or reasons why said road should be vacated or abandoned
3. Petition signed by ten (10) or more electors residing within ten (10) miles of the road proposed to be vacated or abandoned
 - a. Address must be included with each name

NOTE: Attached is a petition sheet which you may use. There is a section for the legal description, reason why road is to be closed or vacated, and an area for ten (10) electors signatures.

The petitioner will be subject to paying the costs involved with the abandonment and closing of a road. The expenses involve the mailing of certified letters, publication costs and the fee for the highway superintendent to inspect the property.

Vacating a road means the road will no longer exist. Fences can be placed over the road.

Closing a road means no maintenance will be given the road, but there will be a road there for possible travel by land owners or any utility company.

State of Nebraska)
County of Stanton) §

PETITION

To the County Board of Stanton County, Nebraska:

The undersigned electors, all residing within ten (10) miles of the road which is hereby proposed to be vacated/closed, ask that the public road commencing at: (legal description)

be vacated/closed.

Said road should be vacated/closed because _____

The undersigned request that a time and date be set for a public hearing and that the County Board proceed with vacating/closing the above described road as set forth in §39-1722 through §39-1731, RRS, as amended.

Signature

Address

- | | | |
|-----|-------|-------|
| 1. | _____ | _____ |
| 2. | _____ | _____ |
| 3. | _____ | _____ |
| 4. | _____ | _____ |
| 5. | _____ | _____ |
| 6. | _____ | _____ |
| 7. | _____ | _____ |
| 8. | _____ | _____ |
| 9. | _____ | _____ |
| 10. | _____ | _____ |

I, _____, of lawful age being first duly sworn, depose and say that I am acquainted with each and all of the parties whose names are signed on the within petition and that each of said parties are electors and that each reside within ten (10) miles of the road in said petition described.

Subscribed in my presence and sworn to before me _____,

(seal)

Notary Public

39-1722. Road vacation or abandonment; resolution of county board directing study; report to board; permanent record.

The county board of any county may by resolution, when it deems the public interest may require vacation or abandonment of a public road of the county, direct the county highway superintendent or in counties having no highway superintendent then such person as the board may direct to study the use being made of such public road and to submit in writing to the county board within thirty days, a report upon the study made and his or her recommendation as to the vacation or abandonment thereof. Said resolution and report shall be retained in the office of the county clerk as a part of the permanent public records of the county board; *Provided*, that the county board shall not require vacation or abandonment of any public road or any part thereof which is within the area of the zoning jurisdiction of a city of the metropolitan, primary, or first class without the prior approval of the governing body of such city.

Source: Laws 1957, c. 155, art. IV, § 22, p. 547; Laws 1971, LB 192, § 2; Laws 1980, LB 607, § 1.

Annotations

Statute providing for limited access to interstate highway was not limited or controlled by general road laws. *Fougeron v. County of Seward*, 174 Neb. 753, 119 N.W.2d 298 (1963).

The discretion exercised by a county board of commissioners under this section and section 39-1725 is not judicial in nature, and as such, the trial court did not have jurisdiction to hear a petition in error under section 25-1901. *Camp Clarke Ranch v. Morrill Cty. Bd. of Comrs.*, 17 Neb. App. 76, 758 N.W.2d 653 (2008).

39-1723. Road vacation or abandonment; electors' petition; contents; study and report.

Any person desiring the vacation or abandonment of any public road of the county shall file in the office of the county clerk of the proper county, a petition signed by ten or more electors residing within ten miles of the road proposed to be vacated or abandoned, which petition shall contain (1) the names and addresses of said electors, (2) a clear and unambiguous description of the road proposed to be vacated or abandoned, (3) the reason or reasons why said road should be vacated or abandoned, and (4) a request that a time and date be set for public hearing before the county board. The county board shall within two weeks thereafter direct the county highway superintendent, or in counties having no highway superintendent then such person as the board may direct, to proceed in the manner set forth in section 39-1722.

Source: Laws 1957, c. 155, art. IV, § 23, p. 547; Laws 1961, c. 189, § 9, p. 583; Laws 1980, LB 607, § 2.

39-1724. County board resolution ordering public hearing; publication; service of notice on adjacent landowners and municipality.

Upon receipt of the report, as provided in section 39-1722, the county board shall adopt a resolution fixing the time, date, and place for public hearing. Such resolution shall contain a clear and unambiguous description of the road to be vacated or abandoned. The county board shall cause such resolution to be published once a week for three consecutive weeks in a legal newspaper published in the county or, if none is published in the county, in a legal newspaper of general circulation in the county. Whenever possible the board shall cause copies to be served by either registered or certified mail upon the owners of land abutting on or adjacent to the road to be vacated or abandoned and upon the planning and public works directors of a city of the metropolitan, primary, or first class when such road or any part thereof is within the area of the zoning jurisdiction of such city

by mailing the same to the last-known address of each owner not less than two weeks in advance of the hearing.

Source: Laws 1957, c. 155, art. IV, § 24, p. 548; Laws 1971, LB 192, § 3; Laws 1980, LB 607, § 3; Laws 1986, LB 960, § 30.

39-1725. Order of county board; contents; conditions and vote required for vacation or abandonment; resolution; disposition.

After the public hearing the county board shall by resolution at its next meeting or as soon thereafter as may be practicable vacate or abandon or refuse vacation or abandonment, as in the judgment of the board the public good may require. Vacation and abandonment shall not be ordered except upon vote of two-thirds of all members of the board and the prior approval of the governing body of a city of the metropolitan, primary, or first class has been obtained when any public road or any part thereof is within the area of the zoning jurisdiction of such city. If such road lies within a township in a county operating roads on a township basis the road shall not be vacated or abandoned unless an offer has been made to relinquish to the township in the manner provided in section 39-1726.

In the event that the county board decides to vacate or abandon, its resolution shall state upon what conditions, if any, the vacation or abandonment shall be qualified and particularly whether or not the title or right-of-way to any vacated or abandoned fragment or section of road shall be sold, revert to private ownership, or remain in the public. If the county board fails to specify in a resolution as to the disposition of right-of-way, and if there shall be nonuse of such right-of-way for any public purpose for a continuous period of not less than ten years, the right-of-way shall revert to the owners of the adjacent real estate, one-half on each side thereof. When the county vacates all or any portion of a road, the county shall, within thirty days after the effective date of the vacation, file a certified copy of the vacating resolution with the register of deeds for the county to be indexed against all affected lots.

Source: Laws 1957, c. 155, art. IV, § 25, p. 548; Laws 1959, c. 167, § 7, p. 611; Laws 1971, LB 192, § 4; Laws 1972, LB 1277, § 1; Laws 1980, LB 607, § 4; Laws 2001, LB 483, § 7.

Cross References

Effect of conveyances of tracts adjacent to vacated streets or alleys, see section 76-275.03.

Annotations

With respect to public roads, a county which vacates a road while retaining a right-of-way has a duty to exercise such degree of care as would be exercised by a reasonable county under the same circumstances. *Blaser v. County of Madison*, 285 Neb. 290, 826 N.W.2d 554 (2013).

County board's decision not to rebuild bridge upheld where no showing that such discretionary decision was arbitrary or capricious. *State ex rel. Goossen v. Board of Supervisors*, 198 Neb. 9, 251 N.W.2d 655 (1977).

Constitutionality of this section sustained. *Emry v. Lake*, 181 Neb. 568, 149 N.W.2d 520 (1967).

Title to abandoned road remained in county until a period of ten years of non-use had elapsed. *Plischke v. Jameson*, 180 Neb. 803, 146 N.W.2d 223 (1966).

The discretion exercised by a county board of commissioners under section 39-1722 and this section is not judicial in nature, and as such, the trial court did not have jurisdiction to hear a petition in error under section 25-1901. *Camp Clarke Ranch v. Morrill Cty. Bd. of Comrs.*, 17 Neb. App. 76, 758 N.W.2d 653 (2008).

39-1726. County operating roads on a township basis; offer to relinquish; procedure; vacation in metropolitan cities; notice to city planning director.

(1) No fragment of a county road lying within a township in a county operating roads on a township basis shall be vacated or abandoned without first offering to relinquish it to the township. The county board shall offer to relinquish such county road by written notification to such township. Such offer to relinquish may be conditional or subject to the reservation of any right which the county board deems necessary and proper. Four months after sending the written notification, the county board may proceed to abandon such county road unless a petition from a notified township has been filed with the county board setting forth that the township desires to maintain such road, or portion thereof, subject to the reservations contained in the notice. The county board may reject any petition which does not accept the conditions or reservations set forth in the notice. The petition and the acceptance or rejection thereof by the county board shall be placed upon public record in the office of the county clerk. In the event the petition is accepted, the county board shall by resolution relinquish the county road to the township. From the date of the resolution the county shall be relieved of all responsibility in relation to the road. In the event a petition for relinquishment is not received within four months or in the event that the petition for relinquishment is not accepted, the county board shall, by resolution, state whether the vacated or abandoned road shall be retained or disposed of by sale, or by reverter to the adjacent property or otherwise.

(2) In any county in which is located a city of the metropolitan class, written notification of the proposed vacation or abandonment shall be given to the planning director of the city, and any recommendations which the officer shall make shall be received and considered before such vacation or abandonment is effected.

(3) When the county vacates or abandons all or any portion of a county road, the county shall, within thirty days after the effective date of the vacation, file a certified copy of the vacating resolution with the register of deeds for the county in which the vacated property is located to be indexed against all affected lots.

Source: Laws 1957, c. 155, art. IV, § 26, p. 549; Laws 1963, c. 237, § 1, p. 727; Laws 1980, LB 607, § 5; Laws 2001, LB 483, § 8.

39-1727. County roads; detachment from county road system.

Whenever a county road has been designated and established as provided by sections 39-2001 to 39-2003, the county board may detach the same, or any part thereof, from the county road system, and cause the same to revert back as a township road. The county board shall no longer be obliged to maintain the same and the maintenance and improvement of the road shall thereafter devolve upon the township.

Source: Laws 1957, c. 155, art. IV, § 27, p. 550.

39-1728. Barricading of county or township roads by Department of Roads permitted; conditions; procedure.

A county or township road may be barricaded by the road department of the state for the purpose of regulating, restricting, or prohibiting ingress and egress to a state highway upon which the department has established a limited- or controlled-access facility; *Provided*, that prior thereto the written notice has been given by the department to the county or township board having jurisdiction of the road to be barricaded and that within thirty days from the date such notice was given, the county or township board, as the case may be, has not adopted by unanimous vote of all its members and delivered to the department a resolution opposing the barricading of such road; *and provided further*, that

road crossings shall be provided along such controlled- or limited-access facilities at intervals of not to exceed five miles unless the consent of the county board has been obtained for the establishment of fewer crossings.

Source: Laws 1957, c. 155, art. IV, § 28, p. 550.

Annotations

This section is not special legislation and does not operate to deprive landowner of property without due process of law. *Fougeron v. County of Seward*, 174 Neb. 753, 119 N.W.2d 298 (1963).

39-1729. Access to public roads; right assured; landowners may waive; condemnation.

The right of reasonable convenient egress and ingress from lands or lots, abutting on an existing street or road, may not be denied except with the consent of the owners of such lands or lots, or with the condemnation of such right of access to and from such abutting lands or lots.

Source: Laws 1957, c. 155, art. IV, § 29, p. 550.

39-1730. Public roads; elimination of railroad crossings; petition; procedure.

Upon the petition of the owner or operator of any railroad, the county board is authorized to vacate such part of a public road, outside of incorporated cities and villages, lying within the right-of-way of such railroad, and not part of a state highway, if it appears that such crossing should be eliminated in the interest of public safety. Such petition shall be filed with the county clerk of the county in which such part of a public road is located. The same procedure shall be followed in the elimination of railroad grade crossings as is provided for the relocation, vacation, and abandonment of public roads as set forth in sections 39-1722 to 39-1725.

Source: Laws 1957, c. 155, art. IV, § 30, p. 551.

39-1731. Roads along or across county line; discontinuance.

Roads established by the concurrent action of the county boards of two or more counties can be discontinued only by the concurrent action of the county boards of the several counties in which the same may be situated; but such roads shall be treated in all other respects as other public roads.

Source: Laws 1957, c. 155, art. IV, § 31, p. 551.