

Opinion No. 47-5024

May 14, 1947

BY: C. C. McCULLOH, Attorney General

TO: Mr. T. E. Mears, Jr. Assistant District Attorney 9th Judicial District Portales, New Mexico

{*47} We wish to acknowledge receipt of your inquiry of May 5, 1947, concerning the authority of the city of Portales to place parking meters around the court house square in said city.

The pertinent facts, as stated in your letter, are as follows:

"In 1904, the county of Roosevelt acquired title by deed to a block of land in the center of the business district of the present city of Portales. On this block the county erected a court house. About 1936 or 1937 the city of Portales desired to widen all streets adjacent to the said square and received permission from the then county commissioners to take about twenty feet off of each side of said square and place same in the street, moving the sidewalks back some twenty feet on the property of the county. No deed was made by the county commissioners covering the land so given, and no dedication of the land to a public use seems to have been made, but the giving of the land seems to have been by oral consent of the then county commissioners * * *.

The city council of said city now proposes to install parking meters on the sidewalk around the entire square, claiming the right to do so under the authority of said city to regulate traffic in the business district of said city. To this the county commissioners object."

That a common law dedication of property can still be made, even though we have provisions for statutory dedications, may be gathered from the statement contained in 18 C. J., Section 11, Page 41, which provides as follows:

"It is well settled that statutes providing means whereby lands may be dedicated to the public uses do not prevent such uses being created by dedication as at common law . . ."

At page 41, Section 6 of the same volume of C. J., it is stated that the distinguishing difference between a statutory and a common law dedication, is that the former operates by way of a grant and the latter by way of an estoppel in pais. (See also *Poindexter v. Schaffner* 162 S. W. 23, {*48} decided by Court of Civil Appeals of Texas.)

It is stated in 18 C. J., Section 13, that:

"No particular form or ceremony is necessary to the validity of a common law dedication. No writing or conveyance is necessary to render the dedication effective as the statute of frauds has no application to the doctrine of dedication. * * *"

For authority sustaining a parol dedication, see McIntyre et al v. Bd. Comm. El Paso Co., 61 P. 237, 15 Colo. App. 78, and Still v. Lovelady, 117 So. 481, 218 Ala. 19.

The question as to whether or not a dedication may be made by public authorities is answered in 16 Am. Jur. Sec. 13, page 356, wherein it is stated:

"The state or political subdivisions may dedicate lands owned by it to a particular public use."

(See Philadelphia Museums v. U. of Penn., 251 Pa. 125, 96 A. 126, Ann. Cas. 1917 D. 499.)

It is my opinion that when the county commissioners orally gave consent to the city of Portales to widen the city streets by moving over on county property, some 20 feet around the square where the court house is situated, and the city authorities accepted such and made street improvements, and the public entered into the use of same, and has for a period of ten years or more, that all elements of a common law dedication of said land to the public have been satisfied.

The very basis of a common law dedication is "estoppel in pais," that is to say, estoppel by conduct, laches, negligence, and all other estoppels not arising from record, deed or written contract.

The installation of parking meters on the land in dispute by the city authorities is a move to control and regulate traffic and in view of the common law dedication by the county commissioners of this land to the public for use as city streets, I am of the opinion that the county authorities cannot now prevent the city from installing such meters.

Trusting the aforementioned satisfies your inquiry, I am

By ROBT. V. WOLLARD,

Asst. Atty. General