

**Hamerly
v.
Denton**

359 P.2d 121, 123, 124, 125 (1961)

RS 2477 (43 U.S.C.A. sec. 932):

Acceptance:

"But before a highway may be created, there must be either some positive act on the part of the appropriate public authorities of the state, clearly manifesting an intention to accept a grant, or there must be public user for such a period of time and under such conditions as to prove that the grant has been accepted."

Public User Requirements:

"(1) that the alleged highway was located 'over public lands', and"

"(2) that the character of its use was such as to constitute acceptance by the public of the statutory grant."

Public Lands:

"... lands which are open to settlement or other disposition under the land laws of the United States. It does not encompass lands in which the rights of the public have passed and which have become subject to individual rights of a settler."

In this case there were a number of entries which were subsequently relinquished or closed prior to the Hamerly's home site entry which went to patent. The public usage needed to accept the grant had to occur when the land was not subject to an entry. The court found that there was no evidence of public user during the times the land was not subject to an entry. "Where there is a dead end road or trail, running into wild, unenclosed and uncultivated country, the desultory use thereof established in this case does not create a public highway." At 125.

Dedication:

"There is a dedication when the owner of an interest in land transfers to the public a privilege of use of such an interest for a public purpose."

Intent to Dedicate:

“Dedication is not an act or omission to assert a right; mere absence of objection is not sufficient. Passive permission by a landowner is not in itself evidence of intent to dedicate. Intention must be clearly and unequivocally manifested by acts that are decisive in character.”

Prescriptive Use:

"Use alone for the statutory period - even with the knowledge of the owner - would not establish an easement."

Such use is presumed to be permissive unless the claimant proves the use was "openly adverse to the owner's interest by ... distinct and positive assertion of a right hostile to the owner of the property."