

An. Code, 1924, sec. 144. 1912, sec. 90. 1904, sec. 89. 1888, sec. 85. 1853, ch. 220, sec. 2.

**145.** Counter petitions may be presented to the county commissioners, and when they are, the county commissioners shall take into consideration the reasons contained in the counter petition, and such other testimony as may come before them, and determine the case as in their opinion shall seem right and proper.

Cited but not construed in *Smith v. Goldsborough*, 80 Md. 57.

See notes to sec. 144

An. Code, 1924, sec. 145. 1912, sec. 91. 1904, sec. 90. 1888, sec. 86. 1853, ch. 220, sec. 3. 1884, ch. 364.

**146.** Whenever the county commissioners shall decide that it is expedient that a road be opened as provided in the preceding section they may contract with the owner or owners of the land through which the said road is intended to run for the right of way over the land necessary for said road, if he, she or they be competent to contract; and in case the said county commissioners shall so contract they shall cause a plat of the said road to be made by a competent surveyor and filed and recorded in the office of the clerk of the circuit court for the county in which the deed or deeds conveying the said lands are required to be recorded, which said plat shall be referred to in, and shall be a part of said deed or deeds, and the lands so conveyed shall be and become thenceforth the property of the county, in the same manner and to the same extent as other county roads, and no further, subject to the public rights of way over the same; and it shall be lawful for the said county commissioners of any county so to contract for land for a public wharf, drains for county roads or other public use or uses, which said land shall be the property of said county, subject to said use or uses; and whenever the county commissioners shall deem it expedient that examiners should be appointed to view the grounds for the purpose of opening, altering or closing a road, they shall appoint three persons as examiners, who shall be freeholders in the county, and not interested in or holding lands through which the road is proposed to be opened, altered or closed; but the appointment of examiners shall not prevent the said county commissioners at any time thereafter from contracting with the owner or owners, as above provided; and the county commissioners of any county are authorized, when the county roads cannot be conveniently drained by drains along the said county roads, to make the same upon the property outside the limits thereof; and they shall contract for the lands that may be required for that purpose, as above provided, or they may proceed to condemn the lands that may be necessary for the purpose under the provisions of sections 329 to 334, both inclusive of article 23, title corporations.

The jurisdiction of county commissioners being special and limited, that they complied with requisites to give them jurisdiction must appear on face of proceedings. Where proceeding fails to show that examiners are "freeholders in the county and not interested in or holding lands through which the road is proposed to be opened," the commissioners have no jurisdiction, nor has circuit court, and hence an appeal lies to court of appeals. *Cumberland Valley R. R. Co. v. Martin*, 100 Md. 166.

County commissioners may close an old road and open a new one without first appointing examiners. This section compared with local act of 1900, ch. 685, sec. 208. *Riggs v. Winterode*, 100 Md. 449.

The circuit court upon reversing the action of the county commissioners on appeal (under art. 5, sec. 91), has no power to appoint examiners. *Gist v. Owings*, 95 Md. 307.

This section would seem to expressly confer upon county commissioners power to construct wharves. *Chaney v. Anne Arundel County*, 119 Md. 387.

Cited but not construed in *Winchester v. Cecil County*, 78 Md. 267.

See notes to secs. 143 and 144.