

**FORMAL OPINION
2001-F-05**

DATE ISSUED: May 16, 2001

REQUESTED BY: Ted Seibel, Wells County State's Attorney

QUESTIONS PRESENTED

I.

Whether a county may replace an existing bridge with a culvert or box culvert pursuant to N.D.C.C. § 24-08-03.

II.

Whether maintenance of such a culvert is the responsibility of the county, assuming the county has authority to replace the bridge with a culvert.

ATTORNEY GENERAL'S OPINION

I.

It is my opinion that a county may replace a bridge with a culvert when acting pursuant to N.D.C.C. § 24-08-03.

II.

It is my further opinion that the county continues to be responsible for a culvert constructed by the county under N.D.C.C. §24-08-03 just as it would be responsible for a bridge pursuant to the same authority.

ANALYSES

I.

Chapter 24-08 permits a board of county commissioners to build bridges upon the petition of an appropriate group of freeholders. N.D.C.C. § 24-08-01. The expenses of constructing the bridge are to be paid out of the county bridge fund. N.D.C.C. § 24-08-02. Bridges are to be maintained and repaired or replaced by the county. N.D.C.C. § 24-08-03. These statutes are not the only authority by which a bridge may be

constructed. For example, the board of township supervisors has supervision over township roads and bridges under N.D.C.C. § 24-06-01. This authority includes the power to build bridges in the township. Caterpillar Co. v. Detman Tp., 244 N.W. 876, 879 (N.D. 1932). The power of the county to build bridges under chapter 24-08 is in addition to the county's responsibility for the county road system. N.D.C.C. § 24-05-17. Therefore, a county may construct a bridge pursuant to a petition under section 24-08-01 on a township road as well as on a county road. The question's premise is that the bridge under discussion was constructed pursuant to section 24-08-01 on a township road.

Prior interpretation of chapter 24-08 implies that the use of the word "bridge" may include "culvert." In a 1923 case decided under substantially similar predecessors to N.D.C.C. §§ 24-08-01 and 24-08-03, a county used its bridge fund to construct two bridges, a concrete abutment to a bridge, and five culverts. Backhaus v. Lee, 194 N.W. 887 (N.D. 1923). Whether a culvert may be considered a type of bridge under these statutes was not directly argued in the case. The case is significant, however, from the standpoint that both the county government and the plaintiffs challenging its actions viewed a culvert as coming within the scope of these statutes, despite the reference only to bridges. Replacing a bridge with a culvert is also consistent with a prior interpretation by this office in which the Attorney General said "[t]here is nothing in N.D.C.C. ch. 24-08 limiting the authority of the county as to the manner by which its bridges are repaired or maintained. Thus, there appears to be no prohibition against a county repairing a bridge by replacing it with a culvert or a Texas crossing." Letter from Attorney General Nicholas Spaeth to Earle Myers (Aug. 28, 1986).

The terms "bridge" and "culvert" are not defined in N.D.C.C. title 24. See, N.D.C.C. § 24-01-01.1. "If no definition to a word contained in a certain section is given, the word is to be understood in its ordinary sense, construed according to the context in which it lies, and interpreted to give a reasonable result." Ames v. Rose Tp. Bd. of Tp. Super'rs, 502 N.W.2d 845, 850 (N.D. 1993). A bridge is defined as a structure standing and providing passage over a waterway, railroad, or other obstacle, or something resembling or analogous to a bridge in form or function. American Heritage Dictionary, 208 (2d coll. ed. 1991). A culvert is commonly understood to be a sewer or drain crossing under a road or embankment. Id. at 348. Although a culvert is generally a pipe or box inserted under a road within an elevated embankment and a bridge is a structure upon which a road is set, both provide a means by which a road may pass over an obstacle. "While bridges and culverts are not synonymous, a bridge being a part of a highway to carry it over water or rough spots, and a culvert being a conduit for passage of water under the highway, both generally have been considered as a part of the road." Brenna v. Hjelle, 161 N.W.2d 356, 360 (N.D. 1968). Therefore, a culvert serves the same function as a bridge and may be thought of as a type of bridge.

This conclusion is reinforced by a review of the statutes containing the two words.¹ When the terms “culvert” and “bridge” are used in other statutes, there is an indication that either may be used as the circumstances warrant.² Thus, it appears the Legislature would not preclude construction of a culvert under statutes authorizing construction of a bridge.

The three sections in chapter 24-08 in question, are best understood in their historical context and the needs of the state at the time of their enactment. The predecessors to N.D.C.C. §§ 24-08-01, 24-08-02 and 24-08-03 were enacted in 1890, more than a century ago. According to a Department of Transportation representative, it was the common practice at that time to construct most crossings as bridges due to the unavailability of design and construction techniques. This representative stated that over time, changing technology has lead to culverts frequently being used instead of bridges. See Frandrich v. Wells Co. Bd. of Co. Comm’s., 618 N.W.2d 166, 171 (N.D. 2000) (two 24-foot bridges replaced by culverts).

Although from an engineering standpoint a bridge may be a different physical structure from a culvert, from a practical and popular standpoint a culvert is simply another type of bridge and both often serve the same purpose. See Brenna, supra. “When a word which has both a technical and a popular meaning is used in a statute, the court, in construing the statute, ‘will accord to it its popular signification, unless the very nature of the subject indicates, or the context suggests, that it is used in its technical sense.’” McCullagh v. Fortune, 38 N.W.2d 771, 777 (N.D. 1949) (citation omitted). The Legislature’s inclusion of the term “culverts” in later enacted legislation appears to have been in response to the later development and availability of culverts rather than demonstrating that the earlier legislation was intended to preclude their use. There is no reason to believe the Legislature, when enacting N.D.C.C. § 24-08-01, intended to prohibit a county from constructing a culvert where the engineering and practical considerations at the site would make a culvert safer, more practical, or less expensive than a bridge. Therefore, it is my opinion that a county may replace an existing bridge with a culvert when the county is acting pursuant to N.D.C.C. § 24-08-03.

II.

¹ See N.D.C.C. §§ 21-03-07, 24-03-07, 24-03-08, 24-03-09, 24-23-10, 24-03-11, 24-06-26.1, 24-06-34, 24-08-02.1, 40-05-01(23), 40-42-04, 49-11-03, 61-02.1-01(7)(a)(1), 61-16.1-09(16) and (21), 61-16.1-42, 61-16.1-43, 61-16.1-44, 61-21-25, 61-21-31, 61-21-32, and 61-21-32.1.

² See, e.g., N.D.C.C. § 24-03-07 (the director of the department of transportation shall build and repair suitable culverts or bridges); N.D.C.C. § 24-03-08 (the entity responsible for roads shall install a bridge or culvert of sufficient capacity to permit water to flow freely and unimpeded).

N.D.C.C. §24-08-03(1) states that “[e]ach bridge built under the provisions of section 24-08-01 is under the supervision of the board of county commissioners, and the county shall pay the cost of rebuilding or repairing these bridges.” In Section I of this opinion, I determined that there was no intention in the law to distinguish between a bridge or a culvert when the county is constructing bridges pursuant to sections 24-08-01, 24-08-02 and 24-08-03. For similar reasons, there also is no reason to believe the Legislature intended to preclude continued responsibility for the culvert under section 24-08-03(1). Our office has previously said that “[b]y its enactment of N.D.C.C. § 24-08-03(1), the Legislature clearly sought to hold counties responsible for its bridges and their repair and maintenance. We can find no authority by which a county may escape this responsibility simply by removing its bridges and replacing them with something other than bridges.” Letter from Attorney General Nicholas Spaeth to Earle Meyers (Aug. 28, 1986). Therefore, it is my further opinion that the county continues to be responsible for a culvert just as it would be responsible for a bridge pursuant to N.D.C.C. § 24-08-03.

EFFECT

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the questions presented were decided by the courts.

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