

N.D.A.G. Letter to Gregg (March 29, 1999)

March 29, 1999

Mr. John R. Gregg
Bottineau County State's Attorney
PO Box 26
Bottineau, ND 58318-0026

Dear Mr. Gregg:

Thank you for your letter asking whether a county state's attorney has the duty to either initiate or maintain an action by a county to acquire real property by right of eminent domain.

"The state's attorney . . . shall . . . [a]ct as legal adviser of the board of county commissioners" North Dakota Century Code (N.D.C.C.) § 11-16-01(12). The issue is whether prosecuting an eminent domain action falls within the duty to act as legal adviser of the board of county commissioners.

In interpreting N.D.C.C. § 11-16-01, the Attorney General has previously concluded:

The state's attorney represents the county generally in all matters of law, investigates claims against the county, draws contracts relating to the business of the county, and gives legal opinions in matters of law in which the county is interested. The state's attorney also represents the board of county commissioners and defends the county unless directed by the board to do otherwise. 17 C.J.S., District and Prosecuting Attorneys, supra, at § 12(l)(a). It has been held that the state's attorney is the attorney and legal advisor to county officials in all matters pertaining to the official business of the county. Id.

Letter from Attorney General Nicholas Spaeth to John R. Gregg (April 22, 1985). See also letter from Attorney General Nicholas Spaeth to Allen Kopyy (June 8, 1987) (as legal advisor of the board of county commissioners, the state's attorney has the duty to inform an alleged violator by letter of the decision of the board of county commissioners to seek enforcement of land use or building regulations, if so directed by the board); County of Pembina v. Nord, 49 N.W. 2d 665 (N.D. 1951) (Board of County Commissioners directed the State's Attorney to initiate eminent domain action).

Eminent domain refers to "[t]he power to take private property for public use" Black's Law Dictionary 523 (6th ed.1990)

Acquiring property through eminent domain generally implicates several legal rights and procedures. Because a state's attorney has a duty to represent the county in its legal

affairs, it is my opinion that a county state's attorney has the duty to initiate and maintain an action brought by the county to acquire real property by right of eminent domain.

Sincerely,

Heidi Heitkamp
Attorney General

las/vjk