

N.D.A.G. Letter to Kroke (June 1, 1989)

June 1, 1989

Mr. Jon F. Kroke
Steele County State's Attorney
P.O. Box 565
Finley, ND 58230

Dear Mr. Kroke:

Thank you for your May 2, 1989, letter inquiring whether a county is required to replace a bridge on a township road which was damaged by flooding, closed, and then ultimately removed in the interest of public safety.

A board of county commissioners' responsibilities for the construction, reconstruction, and repair of bridges on township roads is provided in N.D.C.C. § 24-08-01 and 24-08-03. Specifically, N.D.C.C. § 24-08-01 obligates a board of county commissioners to construct a bridge over a township road where the board receives an appropriate petition from township freeholders. The board of county commissioners has discretion in determining the necessity of the construction of the proposed bridge where the cost exceeds \$500.00.

The statute states that if a board of county commissioners determines that a bridge is needed on a county or township road, then the financial responsibility to pay for the construction costs rests with the county. Significantly, N.D.C.C. 24-08-01 does not mandate the construction of any bridge, but rather reserves the question of the necessity of construction to the county commissioners.

Once a bridge has been constructed pursuant to N.D.C.C. § 24-08-01, the county commissioners' responsibilities for that bridge are set forth in N.D.C.C. § 24-08-03. Subsection 1 holds the county responsible for the costs incurred in bridge repair or reconstruction. Other statutory provisions discuss bidding procedures, bridge inspections, bridge closures in the interest of public safety, and the posting of bridges as to the maximum load limits. The statute contains no language which would indicate a legislative intent to abrogate the discretion as to bridge construction vested in a board of county commissioners under N.D.C.C. § 24-08-01. Also, N.D.C.C. § 24-08-03 contains no language that would indicate a legislative mandate that a bridge constructed pursuant to N.D.C.C. § 24-08-01, and subsequently damaged or destroyed, be repaired or replaced.

The portion of N.D.C.C. § 24-08-03(1) addressing the repair or replacement of bridges constructed pursuant to N.D.C.C. § 24-08-01 requires the county to pay for the cost of such repairs or rebuilding, but does not order that a damaged or destroyed bridge be repaired or reconstructed.

The county commissioners, in considering whether to repair or reconstruct a bridge that

has been damaged or destroyed, would be entitled to exercise the discretion granted them under N.D.C.C. § 24-08-01 concerning the necessity of constructing a bridge in the first instance. In exercising that discretion, a board of county commissioners would be entitled to consider the demographics of the area served by the bridge, the traffic volume, the type of traffic using the bridge, the existence of other bridges in the vicinity, the resulting circuitry of travel, etc. To hold that N.D.C.C. § 24-08-03 somehow mandates the repair or replacement of all bridges damaged or destroyed would ignore the question of necessity and could result in the repair or reconstruction of a bridge that formerly had been abandoned because of non-use by the motoring public.

Consequently, it is my opinion that the language employed in N.D.C.C. § 24-08-01 provides discretion to the county commissioners in deciding the initial question of whether to construct the bridge. N.D.C.C. § 24-08-03 does not abrogate that discretion by mandating the repair or reconstruction of such a bridge that is subsequently damaged or destroyed.

Sincerely,

Nicholas J. Spaeth

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