

N.D.A.G. Letter to Haskell (Aug. 10, 1988)

August 10, 1988

Mr. Bruce B. Haskell
Burleigh County State's Attorney
514 East Thayer Avenue
Bismarck, ND 58501

Dear Mr. Haskell:

Thank you for your letter dated July 29, 1988, in which you have requested an opinion concerning under what circumstances a person may post road ditches against hunting.

I have enclosed with this letter a copy of a letter sent to Dominic Volesky of the North Dakota Game and Fish Department addressing a similar question. Whether a specific landowner can legally place a no-hunting prohibition within a ditch of a roadway will require an inquiry as to whether that landowner continues to own the ditch subject to an easement for public travel or if the landowner had deeded fee title to the property comprising the ditch.

In Rutten v. Wood, 57 N.W.2d 112 (N.D. 1953), Rutten posted no-hunting signs on each side of the highway. The court found that the land within the highway right-of-way was also within the no-hunting prohibition.

He posted "no hunting" signs on each side of the highway as provided by law which showed that he intended to include the land within the highway of which he is the owner.

Id. at 115.

Following the reasoning of Rutten and the authority granted under N.D.C.C. § 20.1-01-17, the no-hunting prohibition would extend to ditches so long as the landowner has retained ownership of the highway right-of-way subject to an easement granted for public travel.

I hope this information will be of help to you.

Sincerely,

Nicholas J. Spaeth

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Enclosure