

## **N.D.A.G. Letter to Myers (Aug. 28, 1986)**

August 28, 1986

Mr. Earle R. Myers  
Richland County State's Attorney  
Law Enforcement Center  
413 Third Avenue North  
Wahpeton, ND 58075

Dear Mr. Myers:

Thank you for your June 16, 1986, inquiry wherein two issues were presented:

1. Whether a county continues to be responsible for a bridge built pursuant to N.D.C.C. §24-08-01 where said bridge has been replaced by the county with a culvert or Texas crossing.
2. Whether a township has a duty to maintain and replace access crossings and culverts which were installed by the township to provide abutting landowners access to a township road.

According to your letter, the bridges in question were built pursuant to the provisions of N.D.C.C. §24-08-01. As such, the board of county commissioners must supervise these bridges and must assume "the cost of rebuilding or repairing the bridges." N.D.C.C. §24-08-03(1).

There 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 Texas crossing. However, the county continues to be responsible for the bridge or its replacement structure. By 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.

In regard to the second question, a township has the duty to maintain and replace approach crossings and culverts which were installed by the township to provide abutting landowners access to a township road.

N.D.C.C. §24-06-11 provides:

24-06-11. CONSTRUCTION OF CROSSINGS OVER DITCHES, DRAINS, AND ROADS. -- Whenever a township constructs a ditch or drain in connection with road building, and such ditch, drain, or road

interferes with the ingress or egress of any owner of adjoining land, the township shall install crossings at such point or points as will afford the owner or owners of the premises suitable ingress thereto or egress therefrom.

These approach crossings are part of a township's road system, and it is the township's responsibility to maintain or replace them. Lemer v. Koble, 86 N.W.2d 44, 47-8 (N.D. 1957); Caterpillar Tractor Company v. Detman Tp., 244 N.W. 876, 878-79 (N.D. 1932); N.D.C.C. §§24-06-01, 58-12-03.

When a township constructs a highway, it has the duty to provide for surface water drainage affected by the township highway construction. Rynestad v. Clemetson, 133 N.W.2d 559, 565 (N.D. 1965); N.D.C.C. §24-03-06. The Rynestad court stated: "[i]f the township has the duty to provide a drain for surface water, it has a duty of maintaining such drain." Id. In the same sense, it logically follows that if the township has the duty to construct an approach crossing over such ditch or drain, it has the duty of maintaining or replacing such approach crossing and any drainage appurtenant, such as culverts.

Therefore, where the township constructs an approach crossing, it has the duty to maintain and replace such crossing, including any culverts utilized in the crossing.

Sincerely,

Nicholas J. Spaeth

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