

**N.D.A.G. Letter to Wilkes (Nov. 2, 1988)**

November 2, 1988

Mr. Richard C. Wilkes  
Assistant Burke County State's Attorney  
P.O. Box 39  
Bowbells, ND 58721

Dear Mr. Wilkes:

Thank you for your letter of October 19, 1988, concerning a township's duty to maintain a section line road and the potential liability for an automobile accident stemming from a breach of that duty.

You stated in your letter that it is not known who originally constructed the road on the section line. You also stated that the road has not been maintained for "years" and has reverted to a prairie trail. You do not state that the section line road is part of the township road system.

The fact that the road in question is located upon a section line does not create a presumption that it is a part of the township road system. This office previously issued an opinion recognizing that a township board of supervisors is vested with discretion in selecting the roads that would comprise the township road system. See 1983 N.D. Op. Att'y Gen. 31 (copy attached). Under the rationale of that opinion, the section line road would have to have been designated as a township road before it would become part of the township road system.

In DeLair v. County of LaMoure, 326 N.W.2d 55 (N.D. 1922), the North Dakota Supreme Court examined extensively and discussed a township's duty to maintain section lines as public roads and to maintain public roads on which the township has not undertaken any improvements. Specifically, the court recognized that, because of the costs associated with maintaining an improved road on each section line, a township has no duty to provide an improved road on each section line. My reading of the holding in DeLair suggests that unless it can be shown that the township had incorporated the section line road into the township road system, it would have no duty to maintain the road.

Whether the section line road is part of the township road system is a fact question and essential to any determination of a township's duty to maintain such a road. The resolution of a question of this nature is beyond the authority of this office, which is authorized to only provide opinions and advice on legal questions. See N.D.C.C. § 54-12-01. Thus, I must defer to your judgment the resolution of this factual question.

Sincerely,

Nicholas J. Spaeth

CV

Enclosure