

OPINION
66-325

October 11, 1966 (OPINION)

Mr. Richard B. Thomas

State's Attorney

Ward County

RE: Townships - Roads - Liability for Construction

This is in reply to your letter of September (October?) 5, 1966, relative to the above subject. You state the following facts and questions:

"We have an inquiry from the Burlington Township Board of Burlington, North Dakota, regarding responsibility for a road located in an addition in that township. I am enclosing a plat of the road in the addition which was approved on the 13th of August, 1962, and accepted and approved by the Ward County Planning Commission and the Ward County Engineer. It is now contended that the roads were erroneously constructed and improperly built and that there is not proper drainage.

"The township supervisors contend that the responsibility lies with the individual platting the addition, whereas, the persons residing in the addition state that since the addition was platted, dedicated and accepted within fifteen days following approval, the township board is required to maintain and repair the streets in the addition.

"Would you please advise us as to the responsibility of the township board. I am enclosing a copy of the plat for information purposes.

"I am asking for this opinion even though I have read the applicable citation in an opinion from your office dated August 6, 1962 (11)."

Generally speaking, the use of land for highways, streets and alleys is for public purposes, and, in the absence of a statutory restriction, highways, streets, and alleys may be established by dedication. See 26 C.J.S. 410, DEDICATION, section 8. However, a dedication at common law, like a contract, consists of an offer and acceptance; "* * * the general rule is well settled that a dedication is not binding and conclusive on either party until acceptance * * *." See 26 C.J.S. 459, DEDICATION, section 34.

Until acceptance, the public acquires no rights, and is subject to no duties by reason of the dedication. This rule has been applied in cases where it sought to charge the public with responsibility for the care and maintenance of streets and highways dedicated to public use, or for liability for injuries from defects therein. See Hille v. Nill, 58 N.D. 536, 226 N.W. 635, 637 (1929), in which the court stated: "In order to have a completed dedication to the public's

use, it was necessary that there be an acceptance of the dedication or grant. See *Ramstad v. Carr*, 31 N.D. 504, 154 N.W. 195, L.R.A. 1916B, 1160; *County of Wayne v. Miller*, 31 Mich. 447. Here there was no such acceptance, and so no completed dedication."

In this instance we do not know the purpose of the approval of the plat by the county engineer and the Ward County Planning Commission. The approval of the latter was perhaps concerned with zoning. No facts were made available to us on this precise point. However, it would not appear that either the county engineer or the Ward County Planning Commission would accept the dedication of a township road on behalf of the township unless authorized so to do by the Board of Township Supervisors.

We also recognize that an acceptance of a dedication need not be a formal acceptance. See *City of Grand Forks v. Flom*, 56 N.W. 2d, 324 (N.D. 1952), and 26 C.J.S. 117, DEDICATION, section 45. Again we are without sufficient facts to determine whether the township governing body, by their actions, could be said to have accepted the dedication of the township road. If they exercised any jurisdiction over such road, it would appear they would be presumed to have accepted such dedication.

It is our belief that the responsibility for repair and maintenance of the road depends upon the acceptance of the dedication of the road by the township. If the dedication was accepted, either expressly or impliedly, by the Board of Township Supervisors, the township would be responsible for repair and maintenance. It would further appear that this would extend to any damage caused by improper construction since, if the road was improperly constructed at the time of the dedication, the township should not accept the dedication unless such defects have been corrected or unless they wish to assume liability for same. It is conceivable that if the township is held to have accepted the dedication and is held liable for any damages that might have been incurred from improper construction of the road that they would have a cause of action against the individual platting the addition. However, as to innocent third parties, it would appear they could look to the township, initially, if they have been damaged. As stated above, any discussion as to the liability of the township must depend upon the acceptance of the dedication of the street by the township. If it was not accepted, expressly or impliedly, there can be no liability. If the dedication was accepted, it is conceivable that third parties may look to the township for damages incurred even though the road was in its present state at the time the dedication was made. If the dedication was accepted by the township it would also appear that action to require prevention of future damage could be brought against the township.

HELGI JOHANNESON

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