

OPINION  
67-93

August 2, 1967 (OPINION)

Mr. Robert L. Eckert, State's Attorney

Richland County

RE: Highways - Landing of aircraft - Legality

This is in reply to your letter of 21 July 1967 with regard to landing of crop spraying airplanes on county roads.

You inform us that the plane in question landed several times each time for the purpose of securing supplies to aid in spraying crops on nearby land.

You enclose a copy of a letter from the aeronautics director with regard to case law in local jurisdictions within the state on this matter.

You inform us that the County Commissioners have noted the provisions of Section 2-03-04 of the North Dakota Century Code that: " \* \* \* The landing of an aircraft on the lands or water of another, without his consent, is unlawful except in the case of a forced landing \* \* \*."

The latest expression of opinion of this office in regard to this matter like the letter from the aeronautics director is concerned with the application of Section 39-12-04- does not relate to Section 2-03-04, and the conclusion expressed therein seems to be quite close to that expressed in the letter from the aeronautics director.

Looking to the express provision of Section 2-03-04 quoted above we note that same makes the described action "unlawful." It does not prescribe a punishment for such "unlawful" action, nor does it declare such action to be misdemeanor or felony. On such basis it seems quite possible that such action could be tortious though damages would probably depend on surrounding circumstances.

We find it difficult to relate the overwidth statutory permission to said Section 2-03-04. We note in the syllabus by the Court in Wallentinson v. Williams County 101 N.W.2d. 571 that:

"The owners of lands contiguous to both sides of a section line, opened for highway purposes own the fee to the section line subject to an easement in favor of the public to use the 33 feet on either side of the section line for highway purposes."

On such basis in an appropriate situation it seems possible that the pilot would need the permission of the neighboring landowner assuming landing of airplanes is not a proper "highway purpose", however, we are unable to conclude that permission of the county commissioners, except to the extent that such permission could be construed to make such landing a proper highway use, would be relevant under this statute.

We have not read the lower court decisions mentioned in the aeronautics director's letter though their reasoning might well be of considerable persuasive authority in any given case. Likewise our previously expressed opinion is substantially in the same line of reasoning in proceedings under Section 39-12-04. On such basis we would not suggest that in every instance there should be a prosecution where a spray plane has landed upon a public highway, though we do note the provision of the aeronautics director's letter that: " \* \* \* we encourage aerial applicators who use county roads to get the permission of the County Commissions \* \* \*" and it is not inconceivable that in a proper factual situation criminal proceeding should be brought.

HELGI JOHANNESON

Attorney General