

**OPINION  
68-513**

November 8, 1968 (OPINION)

Mr. Ronald G. Splitt

State's Attorney

LaMoure County

RE: Townships - Roads - Sale of Land Acquired for Roads

This is in reply to your letter of November 5, 1968, with regard to the disposition of a township road right-of-way.

You inform us that in 1927 a township in your county acquired 2.08 acres of land with the intention of using the same as a part of its township road system. The acreage was never used for such purpose and the Township Board of Supervisors would now like to sell this property. The question presented to you is what procedure must be followed by the township to sell this land. You ask whether they can negotiate with a private individual for this parcel of land or must they advertise the land and sell it to the highest bidder.

We certainly do not question that a township has the power to dispose of property held by it surplus to the township corporate purposes, and in the usual instance we do recommend that public property be sold only at public auction. However, the facts you set out would indicate that this is an unusual type of situation.

In the first instance, we believe some consideration should be given to the principles of law announced in *Lalim v. Williams County*, 105 N.W.2d. 339, and other cases such as *Wallentinson v. Williams County*, 101 N.W.2d. 571; *Rutten v. Wood*, 57 N.W.2d. 112, 79 N.D. 436; *Casey v. Corwin*, 71 N.W.2d. 553; and *Rutten v. Wood*, 51 N.W.2d. 112, 79 N.D. 436. While we have not examined the deed to the township and are not familiar with the surrounding circumstances that might have some bearing on the question, it seems eminently probable that what the township acquired here was merely an easement or right-of-way, or at most a determinable fee, under the reasoning of these cases.

Even if we were to assume that a full fee simple title was acquired by the township, it would seem that if the land in question were located similarly to most tracts acquired for road purposes, its disposition would be of interest only to one or possibly two persons and that therefor an auction type of sale would not accomplish the usual results of such a type of sale.

On the other hand, it would seem that disposition of such a tract of land would be of great interest to the immediately adjacent landowner - whether he claimed to be the owner of the fee title thereto subject only to a right of passage over same, whether he claimed to have no present right, title or interest in same, or even if the township's grantor had not conveyed his remaining right, title and interest, if any, in these premises to the present immediately adjacent landowner.

We do note with interest that the Board of Township Supervisors of an organized township does, except as otherwise provided in Title 24 of the North Dakota Century Code, have charge of all proceedings for the opening, vacating, or changing of a highway outside of the limits of an incorporated city where same is a township highway, pursuant to the provisions of chapter 24-07-04 of the 1967 Supplement to the North Dakota Century Code. We note also sections 58-03-01 and 58-06-01 of the North Dakota Century Code, which you cite. We note further the provision of subsection 14 of section 58-03-07 of the North Dakota Century Code to the effect that the electors of each township have the power at the annual township meeting to direct the expenditure of funds raised for the repair and construction of roads within the limits provided in Title 24, HIGHWAYS, BRIDGES AND FERRIES.

We would assume that for practical utilization of record title to such premises by a private landowner, the convenient method of showing actual vacation of the highway rights of the township and/or transfer of its interests would be recording of a quit claim deed executed by and in the name of the Board of Township Supervisors having jurisdiction of the highway in question, granting, conveying and vacating such rights as the township might have in the premises. In view of the fact that the township electors, by reason of the heretofore cited subsection of section 58-03-07, have the authority to and have directed the expenditure of township funds for the purchase of the interests in question, we would further assume that the matter should also be presented to them for their approval prior to any disposition of same by the Board of Township Supervisors.

In view of the practicalities of the situation, it would appear to be appropriate for the township supervisors to privately negotiate with the logical purchaser or purchasers prior to presentation of the matter to the township electors as to consideration and other details of the transaction.

HELGI JOHANNESON

Attorney General