

OPINION
69-294

April 11, 1969 (OPINION)

Mr. Thomas E. Rutten

Assistant States Attorney

Ramsey County

RE: Roads - Section Lines - Closing

This is in reply to your letter of date April 7, 1969, with regard to closing of section line roads.

You call our attention to the amendment of section 224-07-03 of the North Dakota Century Code, and more particularly to the amendments thereto adopted by the 1965 Session of the Legislative Assembly. You indicate that you have been advised that in the past, township roads, including section line roads, could be vacated upon action of the local township board without the necessity of petitioning the county commissioners. Your question is stated as:

Is the above quoted statute (section 24-07-03) the only method of closing a section line road, or is it still possible for the adjoining landowners to petition their local township board without the necessity of going to the county commissioners and where the section line road is not intersected by an interstate highway causing it to be a dead end?"

Section 24-07-04 of the 1967 Supplement to the North Dakota Century Code provides, insofar as here applicable:

24-07-04. JURISDICTION OF PROCEEDINGS TO OPEN OR VACATE HIGHWAY. Except as otherwise provided in this title, all proceedings for the opening, vacating, or changing of a highway outside of the limits of an incorporated city, including the acquisition of right-of-way when necessary, shall be under the charge and in the name of:

* * *

2. The board of township supervisors of an organized township;
* * *

4. The board of township supervisors of each organized civil township in which any part of the road is situated if the road is situated between two civil townships or in more than one civil township;

* * *."

Section 24-07-05 of the North Dakota Century Code provides:

24-07-05. PETITION FOR LAYING OUT, ALTERING, OR DISCONTINUING ROADS. The board having jurisdiction as provided in this

chapter may alter or discontinue any road or lay out any new road upon the petition of not less than six legal voters who own real estate, or who occupy real estate under the homestead laws of the United States, or under contract from this state, in the vicinity of the road to be altered, discontinued, or laid out. Said petition shall set forth in writing a description of the road and what part thereof is to be altered or discontinued, and if for a new road, the names of the owners of the land, if known, over which the road is to pass, the point at which it is to commence, its general course, and the point where it is to terminate."

The amendments to section 24-07-03 do not appear to amend directly, or repeal by implication, said sections 24-07-04 and 24-07-05, or any parts thereof. The jurisdiction and authority of the township boards as set out therein to open, vacate or change highways, or to alter or discontinue any road, or lay out any new road would appear to remain virtually unchanged. The purpose of the 1967 amendment to said section 24-07-04 would appear to be to recognize therein the legislative transformation of North Dakota villages into North Dakota cities. The purpose of the 1965 amendment to section 24-07-03 of the North Dakota Century Code would appear to be to recognize a new situation, i.e., the situation where section line roads or portions thereof are intersected by interstate highway causing such section line roads to be dead ends, where same does not provide adjacent landowners with access to their property, and to provide a solution to the problems created by such new situation, i.e., the "closing" of such section line roads.

In factual circumstances not involving this new situation provided for in the amendment to said section 24-07-03, there would be no reason why, in a proper case falling within the provisions of the above quoted section 24-07-04 of the 1967 Supplement to the North Dakota Century Code and section 24-07-05 of the North Dakota Century Code, the neighboring landowners could not petition their local township board without the necessity of going to the board of county commissioners and obtaining the appropriate vacation or discontinuance of the road involved.

HELGI JOHANNESON

Attorney General