

Date Issued: March 9, 1982 (AGO 82-17)

Requested by: Vincent A. LaQua, Wells County State's Attorney

- QUESTION PRESENTED -

Whether a county is liable to a township for the cost of gravel placed upon a county highway for maintenance purposes when such maintenance was performed without notifying the county commissioners or obtaining their approval of such work.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that the county is not liable to a township for the cost of gravel placed upon a county highway for maintenance purposes when such maintenance was performed without notifying county commissioners or obtaining their approval of such work.

- ANALYSIS -

Section 24-06-19 of the North Dakota Century Code addresses the question raised and states as follows:

24-06-19. EXPENDITURE OF ROAD TAXES. The board of township supervisors must order the expenditure of all road taxes paid into the township treasury in the improvement of the highways under such regulations as it may deem most expedient for the public interests, and for this purpose, shall issue a warrant upon the road funds of the township upon the certificate of the township overseer that such work has been performed satisfactorily; provided, however, that not over fifty percent of the township road and bridge fund, collected within each tax year shall be expended upon highways which are a part of a state or county highway system as designated under the provisions of sections 24-01-02, 24-01-05, or 24-05-16, unless such expenditure is specifically authorized by resolution adopted by a majority of the electors of the township present and voting at any special or annual township meeting. This limitation shall also apply to any special road fund set up under section 57-15-19.2.

This section states that the township supervisors may expend road taxes in the improvement of highways. There is no requirement that townships obtain the permission of the county prior to the making of any improvement upon the highway. However, there is also no provision holding the county liable for costs incurred by the township in improving the highway.

Section 24-05-17, N.D.C.C., states that the board of county commissioners shall have the sole authority and responsibility to construct, maintain, and operate the county road system. Where a township takes it upon itself to improve a highway within the county road system, it does so at its own cost and expense.

- EFFECT -

This opinion is issued pursuant to section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts or the applicable provisions of law are amended or repealed.

ROBERT O. WEFALD
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