

Date Issued: January 27, 1983 (AGO 83-5)

Requested by: Tom P. Slorby, Ward County State's Attorney

- QUESTION PRESENTED -

Whether section 24-08-02.1 of the North Dakota Century Code requires a county to furnish and install, at its expense, all culverts required on a township road.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that section 24-08-02.1, N.D.C.C., requires a county to furnish and install, at its expense, those culverts required on a township road which intersects an established drain.

- ANALYSIS -

Section 24-08-02.1, N.D.C.C., states:

24-08-02.1. COUNTY TO FURNISH AND PAY FOR CULVERTS ON TOWNSHIP ROADS. The county shall furnish and install, at county expense, such culverts as are necessary to be used along township roads at points of intersection with established drains, in accordance with sections 24-08-01 and 24-08-02.

As originally enacted in 1955 N.D. Session Laws 183, section 24-08-02.1, N.D.C.C., contained reference to sections 24-0801, 24-0802, and 61-2136 of the North Dakota Revised Code of 1943. In this setting, section 24-08-02.1, N.D.C.C., was a logical expression of the legislative intent.

Section 61-2136, N.D.R.C. 1943, provided for two methods of allocating the cost of installing a drainage structure on a road that provided access to a portion of a farm or parcel of land severed by the drainage facility. If the road was not located on a section line, the cost of construction and maintenance of the structure would be borne by the drainage district. If the structure was valued at over one hundred dollars and was placed on a section line, it was regarded as part of the county highway, and the Legislature directed that sections 24-08-01 and 24-08-02, N.D.C.C., would apply, making the costs a county expense. If the cost of the drainage structure was less than one hundred dollars in value, the township was to bear the cost.

In 1955, chapter 61-21, N.D.R.C. 1943, was repealed. Section 61-2136, N.D.R.C. 1943, was simultaneously reenacted as section 61-2131, N.D.R.C. 1943. When the Century Code was adopted in 1959, section 24-08-02.1, N.D.C.C., was recodified without any reference to chapter 61-21, N.D.R.C. 1943. Thus, sections 24-08-02.1 and 61-21-32, N.D.C.C., became totally independent addressing separate subjects.

The object of section 24-08-02.1, N.D.C.C., is to provide for the installation of only those culverts on township roads where the road intersects with established drains. The legislative history shows an original intent to have this section encompass the cost of erecting a bridge over a legal drain, by virtue of its prior reference to sections 24-0801, 24-0802, and 61-2136, N.D.R.C. 1943. However, the subsequent repeal of section 61-2132, N.D.R.C. 1943, prohibits such a statutory construction. Likewise, the references to sections 24-08-01 and 24-08-02, N.D.C.C., become surplusage under the same rationale.

The legislative history would also indicate that the phrase "established drain," as used in section 24-08-02.1, N.D.C.C., would be as defined in section 61-21-01(1), N.D.C.C.

- 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.

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