

Office of the Attorney General
State of North Dakota

Opinion No. 83-31

Date Issued: August 9, 1983

Requested by: Richard C. Wilkes
Ward County Assistant
State's Attorney

--QUESTION PRESENTED--

Whether a township board of supervisors has a duty to construct a road on a section line right-of-way upon the request of an individual.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that a board of township supervisors does not have a duty to construct a road on a section line right-of-way upon the request of an individual.

--ANALYSIS--

The legislative intent relative to the designation of the various highway systems of this state, and the jurisdiction over those roads, is expressed in Section 24-01-01 of the North Dakota Century Code. The pertinent part of that statute states:

. . . In designating the highway systems of this state, as hereinafter provided, the legislative assembly places a high degree of trust in the hands of those officials whose duty it shall be, within the limits of available funds, to plan, develop, operate, maintain, and protect the highway facilities of this state, for present as well as for future use. To this end, it is the intent of the legislative assembly to make the state highway commissioner, and the state highway department acting through him, custodian of the state highway system and to provide sufficiently broad authority to enable the commissioner to function adequately and efficiently in all areas of appropriate jurisdiction with specific details to be determined by reasonable rules and regulations which may be promulgated by him, subject to the limitations of the constitution and the legislative mandate hereinafter imposed.

It is recognized that the efficient management, operation, and control of our county roads, city streets, and other public thoroughfares are likewise a matter of vital public interest. Therefore, it is the further intent of the legislative assembly to bestow upon the boards of county commissioners similar authority with respect to the county road system and to local officials with respect to the roads under their jurisdiction.

Section 24-06-01, N.D.C.C., provides that each board of township supervisors shall have general supervision over the roads, highways, and bridges in the township. This statute, when read with the legislative declaration of intent, indicates that the board of township supervisors does have the authority to designate a township road system and has been vested with discretion in selecting or designating the roads comprising such a system.

In the event that the public desires an addition to such a system, Section 24-07-05, N.D.C.C., provides a statutory method for requesting the board of township supervisors to consider such a request. Section 24-07-05, N.D.C.C., states:

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.

Until the procedural requirements of the above statute have been met, and the petition accepted by the board of township supervisors, the township supervisors would have no obligation to construct the highway unless they had otherwise designated it as part of the township system.

--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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