

Office of the Attorney General
State of North Dakota

Opinion No. 85-45

Date Issued: December 9, 1985

Requested by: Keith Reisenauer
Assistant Cass County State's Attorney

--QUESTIONS PRESENTED--

I.

Whether a board of township supervisors has the duty to remove trees from the right-of-way of a township road.

II.

Whether a board of township supervisors has the primary duty to mow grasses and weeds within the right-of-way of a section line road.

--ATTORNEY GENERAL'S OPINION--

I.

It is my opinion that a board of township supervisors has the duty to remove trees from the right-of-way of a township road if the trees constitute a hazard to the traveling public.

II.

It is my further opinion that a board of township supervisors does not have the primary duty to mow grasses and weeds within the right-of-way of a section line road.

--ANALYSES--

N.D.C.C. § 24-01-01, provides, in part:

24-01-01. DECLARATION OF LEGISLATIVE INTENT. Adequate roads and streets provide for the free flow of traffic; result in low cost of motor vehicle operation; protect the health and safety of the citizens of the state; increase property value; and generally promote economic and social progress of the state. Therefore, the legislative assembly hereby determines and declares that an adequate and integrated system of roads and streets is essential to the general welfare of the state of North Dakota.

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.

The declaration of legislative intent is a charge to the various highway officials of this state imposing upon them the obligation to maintain the highway system in a fashion that protects the health and safety of the motoring public. When the legislature discussed the roads and streets in its declaration of legislative intent, it spoke to the right-of-way and not merely the roadway proper. N.D.C.C. §§ 24-01-01.1(20) and 24-01-01.1(31) provide the significant distinction between the two terms.

24-01-01.1. DEFINITION OF WORDS AND PHRASES. The following words and phrases when used in this title shall, for the purposes of this title, have the meanings respectively ascribed to them in this chapter:

20. 'Highway, street, or road' shall mean a general term denoting a public way for purposes of vehicular travel, including the entire area within the right of way. A highway in a rural area may be called a 'road', while a highway in an urban area may be called a 'street'.

31. 'Roadway' shall mean in general, the portion of a highway, including shoulders, for vehicular use. In construction specifications, the portion of a highway within limits of construction.

Thus, the legislature contemplated that the obligation to maintain a safe highway environment extended to the entire width of the right-of-way and not merely the driving surface of a particular road, street, or highway.

A board of township supervisors, through its overseer of highways, has a specific statutory obligation to cause obstructions in a highway to be removed forthwith. N.D.C.C. § 24-06-31, provides as follows:

24-06-31. OBSTRUCTIONS IN HIGHWAY. Each overseer of highways having personal knowledge, or on being notified in writing, of any obstruction in the highway or public street in his district immediately shall remove or cause any such obstruction to be removed.

The fulfillment of the obligation set forth in N.D.C.C. § 24-06-31, when read in conjunction with N.D.C.C. § 24-06-01, indicates that the former provision is but a part of the general supervisory powers given to a board of township supervisors in fulfilling their general obligation with respect to the roads, highways, and bridges under their jurisdiction. The latter statutory provision states as follows:

24-06-01. BOARD OF TOWNSHIP SUPERVISORS HAS SUPERVISION OVER TOWNSHIP ROADS. The board of township supervisors of any township in the state shall have general supervision over the roads, highways, and bridges throughout the township.

The preceding statutory obligations are further clarified if they are read in conjunction with the provisions of N.D.C.C. § 42-01-01(3). This statute addresses the matter of the obstruction of a public street or highway as being a public nuisance. The pertinent provision of N.D.C.C. § 42-01-01, states:

42-01-01. NUISANCE--DEFINITION. A nuisance consists in unlawfully doing an act or omitting to perform a duty, which act or omission:

3. Unlawfully interferes with, obstructs or tends to obstruct, or renders dangerous for passage, any lake navigable river, bay, stream, canal, basin, public park, square, street, or highway; or

The legislature has clearly stated its intent to provide the public with highway rights of way that are free of dangerous obstructions. With respect to township roads, it is the responsibility of the board of township supervisors to see that obstructions, such as trees, are removed from such roads.

II.

N.D.C.C. Ch. 63-05 establishes a board of township supervisors' obligations with respect to the mowing of grasses and weeds on a township highway right-of-way. The statutory scheme of N.D.C.C. Ch. 63-05, imposes the primary responsibility for mowing the weeds and grasses in the township's highway's right-of-way upon the adjacent landowner. N.D.C.C. § 63-05-01, requires the adjacent landowner, after notice, to mow the grasses in the right-of-way on the township highway abutting his property.

If the 'section line road' is not a township road, then neither the board of township supervisors nor the adjacent landowner would have any statutory obligation to mow grasses and weeds along the road's right-of-way.

--EFFECT--

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the questions presented are decided by the courts.

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