

STATE OF NORTH DAKOTA

ATTORNEY GENERALS OPINION 88-12

Requested by: Alan Duppler
Mercer County State's Attorney

Date issued: April 4, 1988

- QUESTION PRESENTED -

Whether a board of county commissioners may install traffic control devices at the intersection of a county highway and a private road where the traffic on the private road is sometimes given the right-of-way over traffic on the county highway.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that a board of county commissioners may install traffic control devices at the intersection of a county highway and a private road where the traffic on the private road is sometimes given the right-of-way over traffic on the county highway, if the traffic control devices are installed pursuant to a need determined by the county commission and if they are installed in conformity with the manual adopted under N. D. C. C. ' 39-13-06.

- ANALYSIS -

North Dakota law, as found at N. D. C. C. ' 24-05-17, provides as follows:

24-05-17. Responsibility of county road system.--The boards of county commissioners in their respective counties shall have the sole authority and responsibility to acquire land for, construct, maintain and operate the county road system as designated and selected by them.

The county road system is designated pursuant to N. D. C. C. ' 24-05-16. The state highway commissioner is required to adopt a manual and specifications for a uniform system of traffic-control devices, consistent with the provisions of law, for use upon all highways and streets in this state. N. D. C. C. ' 39-13-06. All traffic control devices, including markings, signs, and signals, used on any street or highway in this state must conform to the standards of design and location prescribed in the manual adopted by the commissioner, and local authorities on streets and highway under their respective jurisdiction must place devices deemed necessary to regulate, warn, and guide traffic. N. D. C. C. ' 39-13-07.

Pursuant to the above-noted statutes, the state highway commissioner has

adopted a Manual on Uniform Traffic Control Devices. This manual contains the specifications for uniform traffic control devices for varying circumstances.

It is the responsibility of the local authority, whether board of county commissioners or otherwise, to place the approved devices that it deems necessary to regulate, warn, and guide traffic on its highway system.

Legislative intent concerning the various highway systems in this state is expressed in N. D. C. C. ' 24-01-01. That section provides, in part, as follows:

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. . . . While it is necessary to fix responsibility for the construction, maintenance, and operation of the several systems of highways, it is intended that the state of North Dakota shall have an integrated system of all roads and streets to provide safe and efficient highway transportation throughout the state. To this end, it is the intent of the legislative assembly to give broad authority and definite responsibility of the state highway commissioner and to the boards of county commissioners so that working together, free from political pressure and local interests, they may provide for the state an integrated system of state and county highways built upon a basis of sound engineering with full regard to the interest and well-being of the state as a whole.

The above-noted statutory provisions concerning the operation and maintenance of a county highway system and the discretion to place traffic control devices pursuant to the Manual on Uniform Traffic Control Devices appear to give broad discretion to road authorities, including boards of county commissioners, for the operation of highways within the county highway system for the protection of the traveling public.

There are many circumstances where public road authorities install stop signs or other traffic signs at the intersection of public roadways and private roadways, and we have all seen circumstances where cities regulate traffic into and out of high traffic areas such as shopping centers with traffic control signals which at times give the right-of-way to traffic coming from the private shopping center area. N. D. C. C. ' 39-10-05(4) would require traffic to observe traffic control signals at places other than an "intersection," as defined in title 39, in the same manner as those traffic signals installed at such an "intersection." The determination of when traffic control signals are required for the safe control of traffic at the intersection of a private and a public roadway is made by the public road authority having jurisdiction over the road in question and the device installed must comply with the Manual on Uniform Traffic Control Devices adopted by the state highway commissioner. When such traffic control devices

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are placed in positions approximately conforming to the requirements of title 39, those devices must be presumed to have been placed by the official act or direction of lawful authority, unless the contrary is established by competent evidence. N. D. C. C. ' 39-10-04(3).

- 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 question presented is decided by the courts.

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