

**OPINION  
47-134**

May 28, 1947 (OPINION)

HIGHWAYS

RE: Authority of County Commissioners to Relocate Highways

Re: Bald Hill Dam Project

This will acknowledge the receipt of your letter of May 26, 1947, in which you request the opinion of this office as to the legal authority of the board of county commissioners of Griggs County to adopt a resolution by which the board agrees to bear the expense of relocating roads and bridges - such relocation being made necessary by reason of the construction of the Bald Hill Dam and reservoir.

The lands required for the construction and maintenance of the Bald Hill project will be acquired by the United States government. The owners of those lands will be compensated by payment of the market value thereof. The project will be of great economic benefit to many communities in the eastern part of the state. I am not sufficiently familiar with the project to state what benefits will accrue to Griggs County.

Nor am I aware as to the extent of the changes in the location of highways and bridges which will be required in Griggs County by reason of the construction of the Bald Hill project. But as you know, Mr. Duffy, a board of county commissioners has the authority to change the location of county highways when such changes are found or deemed necessary and advisable. It does not appear to me that the question of abandonment of a highway or highways in the sense that the term "abandonment" as used in the statutes is involved. "Abandonment" of a highway implies that it is no longer considered necessary for highway purposes or that another location has been found more suitable. Highways located in the area covered by the impounded waters of the reservoir will not be abandoned. they will be obliterated. They will not be abandoned in the sense that the highways as presently located are no longer needed or that new locations for the highways have been chosen in preference to the old.

I suppose that in some instances the county has for county roads acquired the ownership of the land within the boundaries of the rights-of-way. When this land is appropriated by the United States, compensation for the value thereof can, of course, be demanded. But as far as the county is concerned, the only value of such land is its use for highway purposes. In the case of township roads, unless there is a variation from section lines, the public has an easement in the land for road purposes, the fee title being vested in the owners of the adjacent lands. Abandonment of a township road usually involves only the abandonment of the easement, that is to say, the right to use the land for a highway. And this is often the situation in the case of county roads if located on section lines and the width thereof confined to the 66 feet limit.

It is my opinion that a county or a township can establish new roads

to take the place of those rendered useless or impassable by the construction of water conservation projects. For the construction and maintenance of such projects promote the health and economic welfare of the people.

NELS G. JOHNSON

Attorney General