

**OPINION
47-135**

June 5, 1947 (OPINION)

HIGHWAYS

RE: Power of County to Change Location of Highways

Re: Bald Hill Dam

This will acknowledge the receipt of your letter dated June 4, 1947, in which you say that a majority of the board of county commissioners of Griggs County are willing to adopt the resolution referred to in your letter of May 26, 1947, if advised that they have the legal authority to do so.

Under date of May 28, 1947, I wrote in reply to your letter of May 26, that in my opinion the question of abandonment of existing highways in the area which will be covered with water when the Bald Hill Dam is completed, is not involved in the legal sense that the word "abandonment" implies as used in the statutes. When lands on which county or township highways are now located are covered with the waters of the Bald Hill Dam, new roads will, of course, be needed to replace those which have ceased to exist. I do not see in what respect the county of Griggs is asked to make a contribution for the construction of the Bald Hill Dam. The county has the legal right to construct highways and to change the location of existing highways when the need for a change arises.

It is my opinion that the board of county commissioners of Griggs County has the legal authority to adopt the resolution referred to in your letter. The adoption of such a resolution will imply that the new highways will be built if and when funds are made available for that purpose from county revenues and from other sources.

The Bald Hill Dam is one of several major projects which the federal government proposes to construct. It is a part of a water conservation and flood prevention program which includes the Garrison Dam, the Missouri-Souris Diversion project, and the project for replenishing and restoring Devils Lake and making the Sheyenne River the means of conveying water from the Missouri River to the eastern part of North Dakota, including, of course, Griggs County. The economic benefits of the various projects planned for North Dakota when completed will be incalculable.

For Griggs County the benefits which will be derived will outweigh any expenditures found necessary for the relocation of the highways. Underground waters which have been greatly depleted will undoubtedly be materially restored by the impounding of the waters of the Sheyenne and other streams. Outdoor recreation will be made available.

If the construction of the Bald Hill Dam had been proposed as a work-relief project during the late drought and depression, I do not think that anyone would have thought of questioning the legal right of the county board to facilitate the approval by federal authorities

of the project. And if such legal right existed then, it exists now.

When the legislature created the state water conservation commission in 1937, the importance of utilizing the waters of our streams was recognized. Section 61-0201 of the 1943 Revised Code, originally chapter 255 of the Session Laws of 1937, declares:

It is hereby declared that the general welfare and the protection of lives, health, property, and the rights of all the people of this state require that the conservation and control of waters in this state, public or private, navigable or unnavigable, surface or subsurface, the control of floods, and the regulation and prevention of water pollution, involve and necessitate the exercise of the sovereign powers of this state and are affected with and concern a public purpose.* * *"

The framers of our state constitution recognized the vital interest of the people of the state in the waters of its streams when the embodied in the constitution section 210, which provides:

All flowing streams and natural water courses shall forever remain in the property of the state for mining, irrigating and manufacturing purposes."

In order to facilitate the construction of water conservation projects and flood control projects, it is my opinion that the board of county commissioners may undertake and agree to change the location of highways and bridges under its jurisdiction. The adoption of the resolution referred to in your letter implies, as hereinbefore mentioned, that the new highways will be built when funds are available for that purpose. The roads will be built for the convenience of the people of Griggs County. They will not be a part of the Bald Hill Dam project. And since the board of county commissioners has the authority and jurisdiction to build county highways and bridges, to change the location of such highways, to replace or improve bridges, etc., it is my opinion that the board of county commissioners of Griggs County has the legal authority to adopt the required resolution.

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