

**OPINION  
47-191**

May 31, 1947           (OPINION)

OFFICER

RE: Subject to Removal for Neglect of Duty

Re: Neglect of Duty of County Officer

This will acknowledge the receipt of your letter dated May 23, 1947, in which you say that the township board of Montpelier Township has endeavored to obtain the services of the county surveyor of Stutsman County to do some surveying for the township, but that he has always claimed that he is too busy to do the work required.

The duties of the county surveyor are prescribed by section 11-2001 of the North Dakota Revised Code of 1943. Said section reads as follows:

"The county surveyor shall make all surveys of land within the county which he may be called upon to make by the owner of the land or his representative, or which he is directed to make by the district or county courts, by the board of county commissioners, or by the board of township supervisors of any township within their county. He also shall make a survey of the public roads and of all lands, tracts, or lots owned by the county when directed to do so by the board of county commissioners. The surveys of the county surveyor or of his deputies shall be presumptively correct."

The fees of the county surveyor are prescribed under section 11-2016 of the 1943 Revised Code.

If the county surveyor, or any other county officer, willfully fails and neglects to do his duty, he may be removed from office. Under the provisions of section 44-1101 of the 1943 Revised Code, any county officer may be removed from office by the governor for neglect of duty. Removal proceedings by the governor are initiated by a complaint or charge filed against such official. The procedure is prescribed under the provisions of various sections of chapter 44-01 of the 1943 Revised Code. Section 44-1102 provides: "When the officer sought to be removed is other than the state's attorney, the state's attorney or other competent attorney, upon request of the governor, shall appear and prosecute."

Under the provisions of section 12-0803 of the 1943 Revised Code, "any public officer and any person holding any public trust or employment who willfully neglects or refuses to perform the duties of his officer as prescribed by law is guilty of a misdemeanor."

And section 12-0804 of the 1943 Revised Code provides:

"In addition to the penalty affixed by express terms to every neglect or violation of official duty on the part of public officers, county, city, village, township, or state officers

not liable to impeachment may be removed from office, in the discretion of the court, even though the statute defining the neglect or violation does not so provide."

It would, therefore, appear that the township board of Montpelier Township may, if the board is convinced that the county surveyor is willfully neglecting to do his duty:

1. File a complaint with the governor particularly alleging such neglect; or
2. Make a criminal complaint, in the same manner that any criminal complaint is made, setting forth such willful neglect of duty.

NELS G. JOHNSON

Attorney General