

OPINION
49-190

October 20, 1949 (OPINION)

TOWNSHIPS

RE: Culverts

Your letter of the 17th inst., re duty of township to enlarge culvert in road to accommodate an increased flow caused by an artificial drain constructed by a landowner, has been received and referred to my desk.

67 C.J., page 875, says:

* * *an upper owner has no right to increase materially the quantity or volume of water discharged upon the lower estate;
* * *."

In view of this statement of the law, it is our opinion that the upper owner had no right to construct an artificial drain which would materially increase the flowage of surface water upon lower lands without the consent of the owner of such lower lands. If the culvert was ample to care for the ordinary flowage before the artificial drain was constructed, and a larger culvert is now needed to accommodate the increased flow, the township has been damaged at least by the cost of installing a larger culvert. Therefore, the township is under no obligation to install such larger culvert unless such upper owner pays the reasonable cost of installing such larger culvert.

WALLACE E. WARNER

Attorney General