

OPINION
55-134

September 15, 1955 (OPINION)

TOWNSHIPS

RE: Roads - Procedure to Close

This is in reply to your request for an opinion of this office on township roads.

Your letter indicates that the township board wishes to close a "road" under the procedures set out in section 24-0705 of the N.D.R.C. of 1943. The statute requires that the petition be signed by at least six legal voters who own real estate, or who occupy real estate under the homestead laws of the United States, or under contract from this state, in the vicinity of the road to be altered.

The problem is: as one man owns all the land on both sides of this "road" how far can one go out into the vicinity to get six people to sign the petition for such closing of the road?

The fact that the Legislature of this state has seen fit to qualify the petitioners on the basis of ownership within the "vicinity" of the road rather than on the basis of one-mile distance from the road as was provided in the original territorial statute (See: section 1296, Compiled Laws of the Territory of Dakota of 1887) would indicate that no arbitrary distance to determine vicinity was contemplated. It would be impossible to state without complete knowledge of the topography of the territory, its population, and the like whether or not a one-mile distance, a two-mile distance, or even a five-mile distance, from the road in question would place the property beyond the territory contemplated by the legislative reference to "vicinity."

In view of the history of the statute and considering the North Dakota case you cite it would probably be correct to state that property within one mile of the road would be in its "vicinity" in the usual instance. However, it is our opinion that the question of the qualification of the petitioner as a landowner within the road's "vicinity" is primarily a question to be determined from all surrounding facts and circumstances by the township board in the first instance.

The other problem you submit is whether the township board is within its rights in expending township money for the building of a road one hundred ten feet along a quarter line terminating at the property of a particular individual.

The provisions of section 24-0706 of the N.D.R.C. of 1943 appear to provide specifically for the building of roads under particular circumstances to the property of one individual property owner. The supreme court of this state has not specifically passed on the question of such roads in circumstances other than those coming within the provisions of section 24-0706. It would seem, however, that the fact that a particular road terminates at the property of only one person would not necessarily determine that it is not a public highway (See: 39 C.J.S. 946-948, Highways, Section 27, and cases there cited). Here again it would appear to be a question to be determined by the township board considering all the factors bearing thereon.

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