

**OPINION**  
**56-211**

December 27, 1956            (OPINION)

TOWNSHIPS

RE: Authority of Board Over Township Highways

Your request for an opinion, concerning the authority of a township board to remove overhanging branches from trees along township highways, is acknowledged.

It is apparent that the highway in question has been established by prescription and, of course, it is the general rule and also the rule in this state that in such cases the public acquires merely an easement of passage, the fee title remaining in the landowner. (Rutten v. Wood, 79 N.D. 436, 57 N.W. 2d., 112.)

Another rule established in this state is that the use of highways for moving houses is an extraordinary use and not a public use. (Northwestern Telephone Exchange Co., v. Anderson, 12 N.D. 585, 98 N.W. 706.)

Section 24-0631 of the N.D.R.C. of 1943 provides that obstructions shall be removed from local roads by township overseers. Therefore, if overhanging trees are determined to be a nuisance or an obstruction of normal travel, the township authorities would have authority to cause the same to be removed. (25 Am. Jr. Highways, ss. 296-301.)

In jurisdictions having determined that house-moving is not an ordinary highway use, it is also determined that public authorities have no right to trim trees located on privately owned lands for the purpose of aiding the moving of houses. (25 Am. Jur. Highways, s. 187, page 487, and Comm. of Mass. v. Bayard, 200 Mass. 175, 86 N.E. 285, 20 L.R.A. NS 814.)

Considering the above-stated rules, it is the opinion of this office that a township board does not have authority to trim overhanging branches from trees for the purpose of aiding the moving of a house upon such highway, but it may only do so upon determining that such trees constitute an obstruction of ordinary public travel upon such highway.

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