

N.D.A.G. Letter to Murphy (July 10, 1985)

July 10, 1985

Honorable Jack Murphy
North Dakota State
Representative
District 36
Killdeer, ND 58640

Dear Representative Murphy:

Thank you for your letter of May 20, 1985, making an inquiry as to whether an individual or organization may construct or maintain a highway on the public easement located on the section line.

The question you asked has been addressed by our Supreme Court in Zueger v. Boehm, 164 N.W.2d 901 (N.D. 1969). The question before the Court in that case was identical to the question that you have asked me. In Zueger, the Supreme Court stated the following:

The state has control over its highways but has delegated its power in certain instances to other official bodies, such as the board of county commissioners over county highway systems and in unorganized territory, and to the board of township supervisors in civil townships. . . . As far as we can ascertain, the Legislature has not delegated to private individuals the power to improve or maintain highways which have been officially opened. We believe, however, that private individuals may be granted the right to construct or improve a public highway, upon proper authorization from the proper public authority.

Id. at 906.

The foregoing opinion makes it clear that an individual has no individual authority to construct a public highway on a section line and that such responsibility is vested in the appropriate governmental body. It is equally clear in the opinion that the governmental body does have the authority to contract with an individual for the construction of a highway on the section line easement, provided that the statutory responsibilities of the governmental body were observed during the construction of the improvement.

A copy of the Zueger decision is enclosed for your use. Please call me or Mike Bothun in the Highway Department if you want to discuss it further.

Sincerely,

Nicholas J. Spaeth

cv
Enclosure