

N.D.A.G. Letter to Johnson (June 30, 1987)

June 30, 1987

Mr. Dennis E. Johnson
McKenzie County State's Attorney
P.O. Box 1288
Watford City, ND 58854

Dear Mr. Johnson:

Thank you for your letter of June 1, 1987, wherein you asked about a county's responsibility to maintain county roads located within the exterior boundary of an Indian reservation.

The federal government has recognized the obligation of the various states and their subdivisions to provide for highway transportation within the exterior boundaries of an Indian reservation. 25 U.S.C. § 311 provides the Secretary of the Interior with the power to permit, upon any condition which may be imposed, a state or local authority to open and construct a public highway in conformity with the laws of that jurisdiction through any Indian reservation as well as allotted lands.

Likewise, the federal government has provided that the lands allotted in severalty to Indians may be condemned for a public purpose under the laws of the state where such lands are located and in the same fashion as land owned in fee may be condemned. 25 U.S.C. § 357.

As you mentioned in your letter, the county established the roads on the Fort Berthold Indian Reservation upon easements obtained from the appropriate authorities. Consequently, the roads were constructed in conformity with the appropriate statutory authority.

N.D.C.C. § 24-05-17 states that the boards of county commissioners are responsible for the maintenance of the county road systems located in their counties. The county commissioners, under the auspices of N.D.C.C. § 24-05-16, have the authority to select and designate the county road system. The fact that a portion of that road was located within the exterior boundary of the Fort Berthold Indian Reservation would not negate the county commissioners' responsibility under N.D.C.C. § 24-05-17.

In your letter, you mentioned that in some instances there are no easements of record for some of the roads in question. This fact would not alter my previously stated opinion as to the county's responsibility to maintain the highway in question. However, in this circumstance, a non-easement highway would exist at the pleasure of the United States or the allottee of the lands underlying such a highway. Pursuant to N.D. Const. art. III, § 1(2), the disposition of real property lying within an Indian reservation is subject to the

jurisdiction of the United States. Consequently, the state or its political subdivisions could not obtain a prescriptive highway easement by public use.

I trust that this information will be of assistance to you in resolving your problem.

Sincerely,

Nicholas J. Spaeth

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