

N.D.A.G. Letter to Larson (July 31, 1987)

July 31, 1987

Mr. Stuart A. Larson
Traill County State's Attorney
P. O. Box 188
Hillsboro, North Dakota 58045

Dear Mr. Larson:

Thank you for your letter of July 2, 1987, wherein you inquired as to a board of township supervisors' responsibility to maintain the township highway ditches in a clean condition. You also asked if the cost of such cleaning could be charged back against the land adjacent to the highway. By the clean condition, I assume you mean a highway ditch that is relatively free of obstructions that would interfere with the free flow of water.

Under N.D.C.C. § 24-06-01, the Legislature provided that the general supervision of the township highways would be vested in a board of township supervisors. To assist a board of township supervisors in fulfilling these duties, the Legislature provided for the appointment of a township overseer of highways, and his duties under N.D.C.C. § 58-12-03. Among the statutory duties of a township overseer of highways is the responsibility for the maintenance of the township highways.

The Legislature, in enacting N.D.C.C. § 24-03-06, provided certain standards that would have to be met in the construction of all highway ditches in North Dakota. Among those standards is the requirement that the ditch water drain into coulees, rivers, and lakes as dictated by the topography of the area. Additionally, the ditches are to be so designed so as to avoid the flooding of abutting property.

Since the highway ditch would have to be constructed so as to avoid the flooding of adjacent property, it would follow that the maintenance of the ditch would have to conform to the same standards applied to its construction. See Lemer v. Koble, 86 N.W.2d 44 (N.D. 1957). A lesser standard of maintenance would have the effect of nullifying the legislative direction in N.D.C.C. § 24-03-06, concerning the construction criteria of the ditch and the purpose thereof.

Therefore, I would conclude that responsibility for maintaining the ditch on a township highway in a clean condition is the responsibility of the township.

I am unaware of any statutory provision authorizing a township board of supervisors to charge back the cost of maintaining a township highway against land abutting such highways. This may be a matter that should be brought to the attention of the 1989 Legislative Assembly if the townships in your county desire reimbursement for ditch maintenance.

Sincerely,

Nicholas J. Spaeth

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