

N.D.A.G. Letter to Argue (May 21, 1991)

May 21, 1991

Mr. Wes Argue
Hensel City Attorney
Argue & Cook
#1 Wall Street
Hamilton, ND 58238-9988

Dear Mr. Argue:

Thank you for your May 9, 1991, letter concerning regulation of a roadway by the City of Hensel.

You say the City of Hensel has placed "speed bumps" on a roadway which forms the east boundary line of the city. The roadway is also a township road on the boundary between Lodema and Park Townships. You have asked two questions relating to the city's action:

1. May a city provide for the construction of speed bumps to slow traffic in its jurisdiction?
2. When the roadway through the city is also a township right-of-way, must the construction of speed bumps, if permissible, be made with the concurrence of the townships involved as well as the city, or may the city proceed on its own?

There are no statutes that either expressly authorize or prohibit speed bumps. The city does have broad powers under N.D.C.C. § 40-05-01(8) to regulate its streets. That subdivision grants to all cities the power:

To lay out, establish, open, alter, repair, clean, widen, vacate, grade, pave, park, or otherwise improve and regulate the use of streets, alleys, avenues, sidewalks, crossings, and public grounds, and to acquire, construct, maintain, and operate parking lots and facilities for motor vehicles; to regulate or prevent any practice having a tendency to annoy persons frequenting the same; and to prevent and regulate obstructions and encroachments upon the same.

Pursuant to N.D.C.C. § 40-05-01(18), the city also has the power to regulate the speed of vehicles within the corporate limits of the city. In general, a city has the power to use and control the use of a street for the benefit of the public. Dacotah Hotel Company v. City of Grand Forks, 111 N.W.2d 513, 515 (N.D. 1961). One method of restricting the speed of vehicles is to install speed bumps on a road within the jurisdiction of the city in order to regulate the speed of vehicles.

It is not clear from your letter and accompanying plat whether the entire width of the road in question is within the city limits, or whether all or part of the road is included within the city plat. The general rule is that where the power of regulating streets within a city is vested by statute in the city, the power of the city over its streets is exclusive. Therefore, the city has exclusive jurisdiction to control the use of roadways within its corporate limits. Ludlow v. City of Fargo, 57 N.W. 506, 508 (N.D. 1893). The authority of townships over roads within townships does not extend to roads within the corporate limits of a city. N.D.C.C. § 24-07-04. Accordingly, if the boundary of the city is the east edge of the road in question and the entire width of the road is within the city limits and city plat the city has control over the entire road.

If the dividing line between the city and the township is the center of the road, or the line dividing the townships, N.D.C.C. § 24-07-34 is applicable. That section provides that roads on the line between a township and a city may be "laid out, altered, or discontinued" by the action of both boards. Authority to jointly take action to establish, alter or discontinue a road, in the absence of any other controlling statute, necessarily implies that maintenance and control of the road is a joint responsibility. That responsibility could be governed by an agreement entered among the three governing bodies under the authority of N.D.C.C. ch. 54-40 and N.D.C.C. § 24-06-12.

I hope this information is helpful to you.

Sincerely,

Nicholas J. Spaeth

vkk