

N.D.A.G. Letter to Thompson (May 7, 1986)

May 7, 1986

Mr. Neil Thompson
Attorney at Law
P.O. Box 696
501 Third Street
Devils Lake, ND 58301

Dear Mr. Thompson:

Thank you for your letter of April 7, 1986, requesting that my office take action to open section lines within the counties of Ramsey, Benson, and Nelson which lead into Devils Lake.

In your letter, you state that the county commissioners of these counties have refused to take action to open the section lines after being requested to do so. More specifically, as stated in your postscript, you are not demanding the county or township build a road. Instead, what you are demanding on behalf of the public is that they remove all impediments relative to travel on the section lines, including fences, old car bodies, rock piles, etc.

In North Dakota, the rights of the public to section line highways and to streets are easements, limited to the right of travel and other rights incident thereto. Small v. Burleigh County, 225 N.W.2d 295, 297 (N.D. 1974). There can be no doubt that section lines are open to public travel in North Dakota. However, the Legislature has given the authority to either the board of county commissioners or the board of township supervisors to conduct proceedings for opening, vacating, or changing a highway outside the limits of an incorporated city. N.D.C.C. 24-07-04. This does not require the county or township to maintain an improved road on a section line. DeLair v. County of LaMoure, 326 N.W.2d 55 (N.D. 1982). However, it is up to the discretion of the county commissioners to open the section line.

Therefore, as Attorney General, I have no authority to open the section lines within the counties of Ramsey, Benson, and Nelson which lead to Devils Lake. The facts presented in your letter do not present a criminal violation over which this office would have jurisdiction.

As stated earlier, the county commissioners or the board of township supervisors have the authority to open section lines. In the event that you do not receive what you feel are adequate responses to your request to open the section lines, it would appear that you may be able to institute a private cause of action in the form of a writ of mandamus proceeding against the respective county commissioners.

While I certainly appreciate the frustration that you have experienced in dealing with these county commissioners, I regret to inform you that, as Attorney General, I have no authority to enter into this matter on your behalf or on the behalf of local landowners and sportsmen.

Sincerely,

Nicholas J. Spaeth

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