

N.D.A.G. Letter to Renner (Oct. 24, 1990)

October 24, 1990

Mr. Jerry Renner
Kidder County State's Attorney
P.O. Box 229
Steele, ND 58482

Dear Mr. Renner:

Thank you for your October 2, 1990, letter asking whether the board of county commissioners or the board of township supervisors has jurisdiction to cause the removal of a fence and rubbish on a section line pursuant to the authority of N.D.C.C. §§ 24-06-29 and 24-06-30.

N.D.C.C. §§ 24-06-29 and 24-06-30 provide for a remedy in the event that an individual violates the provisions of N.D.C.C. § 24-06-28, which prohibits the placing of stones or rubbish or fencing within the 66-ft. section line highway easement. In all three statutes, the jurisdictional authority is vested in "the board of county commissioners or the board of township supervisors, as the case may be."

A similar question was raised by your office earlier this year with respect to N.D.C.C. § 24-06-28 and its application to the installation of a cattle guard and a gate in a fence that crossed a section line. In my response of May 7, 1990, I noted that the determination of which political entity had jurisdiction was one that rested on fact. I can find nothing in your current request that removes the jurisdictional question from the fact-finding function. I cannot give you any conclusions as to the jurisdictional facts. However, the existence of an agreement between the township and county, the ownership of the road and the previous exercise of jurisdiction by one entity or another would be factors to consider in deciding which entity was responsible.

Additionally, N.D.C.C. § 24-06-27, which addresses injuries to ditches and the reports to the overseer of highways, and N.D.C.C. § 24-06-31, which provides that the overseer of highways is to remove obstructions to a highway when he has notice thereof, may be of help to you in resolving the jurisdictional question. You should also be aware the overseer of highways is a township officer and has statutory responsibilities for township roads. N.D.C.C. ch. 58-12.

I hope this information will be of some assistance to you in resolving the problem.

Sincerely,

Nicholas J. Spaeth

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