

N.D.A.G. Letter to Hoy (Dec. 26, 1986)

December 26, 1986

Mr. Robert G. Hoy
Cass County State's Attorney
P.O. Box 2806
Fargo, ND 58108

Dear Mr. Hoy:

Thank you for your October 22, 1986, letter wherein several issues were presented. I apologize for the delay in responding to you.

In your first question you ask whether redesignating the county road system would remove from the system certain stretches of roadway which would thereafter become part of the township road system. Redesignation under N.D.C.C. §24-05-16, will not remove the counties' responsibility for roads designated as part of the county system. A road must be vacated pursuant to N.D.C.C. Ch. 24-07, in order to remove it from the counties' responsibility. There are no other statutory procedures that a county can use to remove roads from its responsibility. The statutory authority to transfer, temporarily close, designate a low maintenance highway, or otherwise relieve counties of financial burden may be a good area for legislative action. Therefore, in regard to your question, a county road does not become part of the township road system through redesignation by the county.

Next you ask whether a county has the responsibility to install, improve, repair, sign, inspect, or close bridges on township roads other than as provided in N.D.C.C. §24-08-03. N.D.C.C. §24-08-03 specifies the responsibilities of a county as to the bridges it builds, and includes the responsibility for installing, improving, repairing, signing, inspecting, or closing bridges it has built on county and township roads. Otherwise, there are no other statutory responsibilities placed upon a county for maintenance of a township bridge.

Since the county does have these responsibilities, you next ask whether a county can close a bridge on a township road. Statutory authority permits a county to close a bridge on a township road when the county determines a bridge to be "unsafe." N.D.C.C. §28-08-03(4).

If a bridge is closed to the public, you ask what the responsibilities of the county and townships are regarding perpetual maintenance of closure signs on the bridge. N.D.C.C. §24-08-03(4) requires the county to prevent public use of an unsafe bridge after it is closed. Preventing public use of an unsafe bridge would require adequate warning or notice, by signs, barricades, or otherwise, to the public that the bridge is closed to travel. See also, N.D.C.C. §39-13-07. As long as the bridge is closed to the public because it is

unsafe, N.D.C.C. §24-08-03(4) requires the county to indefinitely prevent public use of the unsafe bridge by adequate warning.

The next question you asked was whether either the county or township has responsibility to remove the bridge which has been closed. The mandates in N.D.C.C. §24-08-03(4), ("prevent its use by the public,") and N.D.C.C. §24-08-03(1) ("shall pay the cost of rebuilding or repairing these bridges,") may prompt the county to replace the unsafe bridge with a substitute structure. Also, due to any potential liability from the bridge collapsing or otherwise causing damage, the county and township may proceed to vacate and remove the unsafe bridge pursuant to N.D.C.C. Ch. 24-07.

Your last question asked whether a township can contribute to repairing or replacing a bridge built by the county, in order to reopen it. N.D.C.C. §24-08-19 allows the township to expend its road tax revenues on bridges built by the county.

Sincerely,

Nicholas J. Spaeth

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