

OPINION
59-130

October 23, 1959 (OPINION)

HIGHWAYS

RE: Opening and Vacating - Access to Highway - Petition
 to Establish Cartway

Your letter dated October 16, 1959, asking several questions concerning jurisdiction and obligation of the county and township under the provisions of Section 24-0706 of the N.D.R.C. of 1943, is herewith acknowledged.

This office agrees with your conclusion that either the Board of County Commissioners or the Board of Township Supervisors may, upon being petitioned to do so, open a cartway or byroad in order to provide access to a public highway. Subsection 6 of section 32-1502 of the N.D.R.C. of 1943 specifically authorizes the use of the power of eminent domain to acquire such property as is necessary to establish such byroads.

The right and power of eminent domain, being inherent with the state, has been delegated to both county and township governing boards, but only for public purposes and therefore, if either of such boards acts favorably upon a petition to establish a cartway or a byroad, the result must be the establishment of a public road.

The mere fact that right-of-way for such cartway or byroad may have been acquired by purchase or by donation would not, in the opinion of this office, alter this conclusion.

Assuming then that the governing board acting on the petition to open a cartway, does thereby establish a public road, it is the opinion of this office that such governing board acquires both the authority to expend highway funds thereon and also assumes at least a small degree of obligation to both construct and maintain a roadway suitable for travel, however, such obligation would appear to be more of a moral obligation than a legal one.

This office has heretofore ruled in an unofficial opinion that the governing board has no obligation to maintain public roads or streets, such as streets platted and dedicated by owners of property in subdividing the same, and not specifically established and opened as a highway by that governing board.

LESLIE R. BURGUM

Attorney General