

GRASS ROOTS REPORT



SEPTEMBER 2011

The Official Newsletter of the ND Township Officers Association

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Officer Compensation Rate Change for 2012 by Ken Yantes

The NDTOA 2010 Annual Membership Meeting unanimously passed a resolution to introduce a bill in the legislature to allow a pay raise for township officers *if it is approved by the electors of the township at their annual meeting.*

The resolution called for an allowable per day raise from the \$20 to \$60 per day for each day necessarily spent serving as an officer for your township. It also asked for the allowable increase of the annual cap of \$1000 to be raised to \$2000.

This means that if the electors in your township vote for a change of officer compensation at the **next annual meeting** it can be set from \$0 to \$60 per day.

This per day compensation must be documented on a daily basis for every day you necessarily devote to the work of your office as supervisors, clerks and treasurers just like it has always been required. Please keep a log of the days you serve so if you need to prove the time served you can document it.

The new law allows additional expenses for travel mileage and other expenses necessarily used in the performance of your office to be in addition to the \$2,000 salary cap.

This bill was introduced by Representative Glenn Froseth, a long time supporter of township government, and was co-signed by Representatives Bill Kretschmar and Andrew Maragos.

Senators Judy Lee, Jim Dotzenrod and Curtis Olafson also co-signed and strongly supported passage of HB1259. It passed the House of Representatives by a margin of 92-1 and the Senate by a unanimous 47-0 margin.

The bill took effect on August 1, 2011 and it specifically states that the rates must be established by the electors at the annual meeting.

Again, the compensation rate has been changed exactly as the resolution passed at our 2010 annual meeting called for: increases of up to \$60 per day and up to \$2,000 per year, if approved at the annual meeting of the township by the electors present.

Be sure to document the meeting dates that you have served as an officer.

State Land Board Accepting Energy Impact Grant Applications

The State Land Board encourages townships and small communities within North Dakota's 17 oil and gas producing counties to apply for grant funds available to address the impact of the region's oil and gas development on local roads and streets.

The July 2011 grant round focused on city infrastructure and the Land Board authorized approximately \$53.5 million in impact grants for city infrastructure projects. Approximately \$6 million remains for grants during the first fiscal year until June 30, 2012.

Townships and small political subdivisions that are experiencing infrastructure needs as a direct result of oil and gas development will be the focus of the second round of grant applications in the 2011-2013 biennium. Counties and other entities will be encouraged to participate in the grant process during the upcoming year.

The Energy Impact Office will accept grant applications from townships and other eligible applicants through October 7, 2011. Applications and additional information are on the North Dakota Energy Impact web site: www.nd.gov/energyimpact

The Land Board, made up of Governor Jack Dalrymple, Secretary of State Al Jaeger, Attorney General Wayne Stenehjem, State Treasurer Kelly Schmidt and Superintendent of Public Instruction Wayne Sanstead, will award grants at least once each calendar quarter.

An advisory committee made up of city, county and other local government officials developed criteria and recommendations for the allocation of grant funds. Eligible projects include road infrastructure projects and other townships and small political subdivision projects necessitated as a result of oil and gas activity. Grant requests for one-time projects related to building or improving physical assets will receive top-priority consideration.

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President's Comments



Hello Township Officers,

I hope your township has gotten all the spring damages repaired and FEMA issues settled, but I am sure few are so fortunate.

Even if things seem to be in pretty good shape we need to remain vigilant as some damages continue to surface. I have seen several culvert crossings collapse as they dried out after handling the spring and early summer deluges. It seems some of these were only hours away from failing when the water went down, so even if the surface looks OK it is best to check for erosion around/under the tubes.

Be careful out there when checking for these washout situations, the ground can suddenly give way and result in injury.

In July, NDTOA Attorney, Tom Moe; District 4 Director, Steve Ginsbach and I traveled to Huron, SD for a multi-state conference. There we met with Township Officer Association representatives from South Dakota, Minnesota and Wisconsin.

I reported that there are some items ND townships are very concerned about, and would be very willing to cooperate on at a national level. Such as: at our last meeting of the Executive Board we resolved to oppose the new definition of navigable water, under the Clean Water Act, which makes most water bodies subject to the Army Corps of Engineers.

If we cannot turn back this new expansion of Army Corps authority, ND townships and road authorities across the country will find that they will need to clear all road and ditch work with the Corps, if the work goes anywhere near a body of water, no matter how small that body is.

Next, I mentioned the loss of roads, homes and entire farms to expanding bodies of water and that adding to those problems; ND townships have to battle the NRCS over work necessary to protect public roads.

And of course, I reminded them that ND townships continue to be irritated by the IRS reporting requirements.

These problems with the Army Corps, NRCS and IRS are issues that would be best dealt with by a multi-state effort and

I expressed our wish to be part of such an effort.

This brings up the topic of NaTaT; as you know we left NaTaT a few years ago and South Dakota walked out right behind us. Now, it is increasingly likely that Minnesota will also be pulling out as more and more of their Executive Board members see it as an ineffectual and increasingly expensive social club; which just happens to be what we saw it as.

Minnesota Board Members indicated a wish to look into working together on our common issues at the national level, possibly sending a small delegation to DC from time to time to meet with our Congressional delegations or at least speaking out together on these issues.

During the next weeks we plan to meet with some of the townships that would be affected by the planned Fargo Diversion. These will be fact-finding meetings for us to become more familiar with the problems faced by our fellow townships in Cass County. We will bring back what we learn to our next Executive Board meeting and then to the annual meeting in Minot.

I urge the townships of Cass County to send representatives to the annual meeting to describe and explain the problems to the association membership, and to prepare a suitable resolution for consideration by the membership to become part of NDTOA policy.

This invitation for resolutions goes out to all ND townships. If you have an issue that should be addressed, or if you feel legislation is needed, bring your resolution to the annual meeting. It would be best if resolutions are sent forward from your county association meeting, if possible.

I hope the rest of the year is smooth and easy for your township. Thanks for being Township Officers, thank you for being part of Grass Roots Government!

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IN AN UPCOMING
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45th NDTOA Annual Meeting

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Executive Secretary's Corner by Ken Yantes

Township Section Line Responsibility

Townships in North Dakota are charged with the major safety responsibility of 56,756 miles of improved township roads.

The question submitted to your state office was, "What about the many miles of unimproved township section lines?"

According to North Dakota Century Code 24-07-03, congressional section lines are considered public roads open for public travel to the width of thirty-three feet on either side of the section line.

NDCC 24-06-01 states that the township board of supervisors of any township in the state has general supervision over the roads, highways, and bridges throughout the township.

Court cases and Attorney General Opinions have held that the town-

ships have no duty to maintain an improved road on each section line in the township.

A 2009 ND Supreme Court case held that a township was liable in the wrongful death of a 13-year-old male on a section line road.

The ND Supreme Court held that the township was liable because they had actual knowledge of an unusually dangerous or unusually hazardous condition on the section line and had not warned travelers of that condition.

If you are aware or have actual knowledge of dangerous or hazardous conditions on your unimproved section lines, you should put up warning signs that indicate the existing conditions.

We tried to reduce the township liability through the introduction of a

legislative bill in the 2011 Legislative Session. Unfortunately, SB2161 was defeated by a narrow margin.

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The Country Lawyer

by Thomas R. Moe, Attorney-at-Law



Greetings! The calendar says it's September, so the Summer has fizzled away. The last I looked, it was still June—but then, every Summer is headed for a fall!

With September comes Labor Day, and it was once said that the reason for Labor Day speeches was to give the picnicking crowds a chance to digest their food quietly.

Therefore I shall give you a few modest thoughts to chew over and hope I produce nothing too hard to swallow!

With the harvest upon us, I note that the "ditchers" are at it again. Most operators want to do some touch up work in their fields to assist in better drainage next year.

Supervisors should visit with these folks and remind them that if the plan is to work in the township ditch in addition to their field ditching, they need permission from the township for the work done in the road right of way.

There's nothing necessarily wrong with cleaning a road ditch, but permission needs to be obtained, and slope requirements need to be maintained.

I had the privilege of attending and participating in the regional meeting of township associations in Huron, South Dakota in July. Groups from Minnesota, Wisconsin, and the two Dakotas were in attendance, and I took part in a question & answer session with my attorney colleagues from the other states.

Yes, the lawyer jokes were in abundance, but it was good to compare problems that we all seem to be having!

Of special note was that there was universal discouragement in some of the regulations and rules that the

various Federal agencies impose upon local road authorities, including townships.

The attorney for the South Dakota Association is, like me, in private practice in a small town, and it was interesting to hear that his township problem areas are almost identical to those we see here in North Dakota.

As Fall approaches, the road ditch mowing season is also upon us, so if you need to remind landowners of their responsibilities, make sure your notices are sent out in a timely manner.

Check title 63-05 of the Century Code in our township handbook for the laws pertaining to weed and grass cutting.

Make plans for attending the State Convention this December—it's a ways off, but hotel rooms will be at a premium so don't wait too long. If you've not been to a convention, please consider participating this year.

We always have an educational program, and it's a good way to meet fellow township officers from across the state. Individual expenses for the meeting should be picked up by your township, including mileage, hotel charges, and meals. Hope to see you there!

Following are some questions received in the office recently. Have a safe harvest and Fall season. TRM

Q: Is there a standard width of right of way for a road? We had to go off the section line because of high water and built a new road on the adjoining property (with the owner's permission). The landowner will give the township a permanent easement, but we don't know how wide it should be.

A: It depends on the amount of traf-

fic you contemplate on the new road. If heavily travelled, you should get at least as much as the section line gives you (66 feet). In fact, under new construction standards adopted by road engineers, 66 feet is even probably not enough in this day and age. Regardless, make sure you have a good legal description of the easement dimensions crafted, and then get the document recorded at the County courthouse, so future supervisors in your township won't have to deal with a "handshake" easement.

Q: We gave a utility company permission to bury some cable in the bottom of our township ditch, but it appears that they went beyond the easement and placed some cable in the adjoining property. Does the township have any liability for the utility company's mistake?

A: Probably not, unless it could be shown that you knew of the utility's plan to go on to private property and further, it could be shown that you knew the landowner would never have allowed it, yet you did not attempt to halt the construction. The landowner could force the utility to remove the line from his property and/or demand payment from the utility for the damage. You may want to send the utility a letter now (for your files) telling them that they violated the terms of your easement and that you will notify the landowner of the same.

Q: We have a resident that wants personal notice of all our meetings. Isn't a notice in the paper good enough?

Cont'd on next page

The Country Lawyer *cont'd from page 4*

A. Under the open meetings/open records laws, when a government body, such as a township, receives a request for notice of meetings, the body must provide the notice to that person by regular mail--in addition to any requirements regarding newspaper notices, etc.

Q. We've got a landowner that wants a culvert taken out, and the landowner on the other side wants the culvert to stay. Who's right?

A: Answer this question: Does the road need the culvert? In other words, determine if the road will suffer from water damage if the culvert isn't there. If so, then a culvert is needed. The landowner then needs to go to the county water board and develop some sort of

drainage plan, if they persist in trying to move the water off of the land.

Q. Can we close some roads for hunting season? They just make a mess when it rains.

A: A township can close its roads, but remember, it is then closed for everyone, including the "locals". And, proper signage must be installed--class 3 barriers, etc. Otherwise, citations for driving on a closed road will have no effect and local State's Attorneys will decline to prosecute.

Q. I see officers' salaries went up to \$60 per day on August 1st of this year. Can we start collecting this amount now?

A. The 2011 Legislature did in fact increase township officers' compensation to a maximum of sixty dollars a day with an effective date of August 1, 2011, so the law is now in effect. However, my guess is that the annual meeting held last March included in the budget a provision for officer salaries at the prior level of twenty dollars-or something even less than that.

The new law says the \$60 rate is a maximum and that an increase to that level could be \$0 to \$60.

The electors of the township shall establish the daily compensation rate for the township clerk, treasurer, and supervisors at each annual township meeting.

2011 Legislative Efforts *Submitted by NDRIF*

Unprecedented disaster emergency activity all around the State of North Dakota this spring and summer makes it seem that the 2011 Session of the State Legislature concluded a long time ago, but it has been less than four months.

Just enough time, in fact, to give some of the efforts extended on behalf of townships during the Session a bit of perspective.

Credit should be recognized where it is due. NDTOA leaders Larry Syverson and Ken Yantes worked hard and effectively on legislation to benefit townships this past Session, as they always do, but under particularly difficult circumstances this year.

Appreciation is also extended to Senators Gary Lee, David Hogue and Dave Nething; and Representatives Robin Weisz, Curt Hofstad and Dennis Johnson for co-sponsoring

legislation intended to limit townships' liability for unimproved section lines (SB 2161).

Many of you may remember from discussions prior to the Legislative Session that the NDTOA, the ND Association of Counties and NDIRF were seeking legislative relief from court decisions that impose potential liability on overseers of local highways (townships and counties) for hazards, natural or otherwise, on unimproved section lines.

Although SB 2161 ultimately was defeated in the very final days of the Session, it was not for lack of trying--perhaps it just made too much sense.

In the midst of working for passage of SB 2161, it was easy to understand how the NDTOA came to recognize Sen. Curtis Olafson, of Edinburg, as Legislator of the Year (2007).

Senator Olafson definitely went the extra mile in hearings, on the floor and in conference committee to support SB 2161 and make it a better bill in the process.

Now, with regard to the issues addressed in SB 2161, we must move on to the next phase.

The NDIRF stands ready to work with the NDTOA, NDACo and the ND Department of Transportation to develop appropriate signage that could be used by townships and counties where needed. Please stay tuned for the results.



WORKING FOR YOU!

Treasurer's Report

by Barb Knutson, Dist. 5 Director and Treasurer



Another summer is fast coming to a close. This is one for the books! Hope this finds you all getting somewhat back to normal after the floods and all.

I am pleased to say that the dues have come in a more timely manner this year. Thanks to all who have sent them in with the list of townships that the payment was for.

However, I am still getting payment for multiple townships with no indication of which townships have paid their dues.

This may not seem like anything of importance to you, but it is important to the townships because if

they have not paid, they are not eligible to vote at the state convention. More than that, the townships that are not paying are riding on the shirt tails of those who are faithful about paying.

While working on the township mailing list, I have noticed improvements from the lists that were received in the past.

Darleen did a very good job with what she had. There are a few things we need to make this more complete.

I am going to make up a "beg" list and if you fit somewhere into this list, *please* help me out with your part.

Working on the membership mailing list has been great for me because I enjoy talking to township officers and answering questions that arise.

Thank you for your time and consideration in this important matter. I understand we all are busy people, but this is important and with your help, we can get on the right track.

If you have questions, please feel free to contact any NDTOA officers. You will find phone numbers on page two of this newsletter.

BARB'S BEG LIST

TOWNSHIP CLERKS/TREASURERS: The forms that are to be filled out and sent to your county auditor are due in MARCH. It is important the auditor receives them on time to complete their part. These forms are necessary to request mill levy rates. There are a number of county auditors who are not receiving your forms on time. Why? Although there is a small percentage of you who are not completing the forms on time, it makes it impossible for the auditor to do their job. Townships are the most efficient form of government if done properly. Please make an effort to get those forms done on time.

COUNTY AUDITORS: I am requesting that you send a spreadsheet with the townships listed alphabetically which includes township officers names, position, address and phone numbers. I really appreciate complete information – it's wonderful to work with those who comply with my request. Thank you! I am asking county auditors to continue to put them in alphabetical order and note the month/day/year of update.

COUNTY ASSOCIATION TREASURERS: I am still receiving checks for multiple townships with no lists of which townships have paid. If you have not submitted your check and information yet this year, please do so now. It is important to receive these lists so we can do a better job of serving you in the future.

Should e-mail addresses be included on the list? In the case of speedy notification, the addresses would be very useful to get information out quickly. When NDTOA received information from the ND Legislature on the availability of snow removal funds, it would have been helpful to email township chairmen with the information. There was a short window of opportunity for this project.

State to Offer Loans to Political Subdivisions Impacted by Weather

The North Dakota Public Finance Authority (PFA) has partnered with Bank of North Dakota (BND) to offer low-interest, disaster loans to political subdivisions impacted by 2011 weather and flooding.

“Local political subdivisions have contacted my office requesting low-interest loans to help them cash flow the unanticipated costs they are incurring in 2011,” said Gov. Jack Dalrymple.

“I requested and we have received presidential disaster declarations but often the funding resulting from those declarations can take some time in being received. This loan program can provide a cash flow bridge until federal funds are finally available.”

Through its Capital Financing Program, the PFA will consider applications from any political subdivision in counties that received a presidential disaster declaration or a gubernatorial executive order or proclamation of a state disaster or emergency.

“This is a tool we hope will be helpful to our political subdivisions as they deal with the many challenges brought on by the weather-related events of 2011,” said Attorney General Wayne Stenehjem.

The PFA financing can provide short-term funding for a political subdivision while the entity is waiting for reimbursement from the federal or state government or provide cash flow financing until sufficient tax revenues have been received to meet the local match requirements.

“By working with the state bank, the authority can offer a low-interest floating rate to political subdivisions which in turn reduces costs to North Dakotans,” said Agriculture Commissioner Doug Goehring.

This special disaster assistance financing is being offered until December 31, 2011. More information about the program can be obtained by contacting the PFA at 701-328-7100.

The PFA was established to make loans to political subdivisions of the state through the purchase of municipal securities.

Subject to credit and program requirements, the PFA can lend money to a political subdivision for any purpose for which the political subdivision has the legal authority to borrow money through the issuance of municipal securities.

State law allows the PFA to purchase qualified small issue bonds and to issue industrial development bonds covered under the Municipal Industrial Development Act.

The Industrial Commission of North Dakota, consisting of Gov. Jack Dalrymple, as chairman, Attorney General Wayne Stenehjem and Agriculture Commissioner Doug Goehring, oversees the PFA.

Public Finance Authority (PFA) Capital Financing Program Disaster Financing Availability

PURPOSE: This program will be used to provide disaster assistance to political subdivisions affected by weather related events until federal and state money is available or to assist in cash flowing local match requirements.

APPLICANT: Any North Dakota political subdivision that is within a county that has received a Presidential Public Disaster Declaration or a

gubernatorial executive order or proclamation of a state disaster or emergency.

LENDER: Public Finance Authority. The process would require the political subdivision to submit a Capital Financing Program (CFP) application to the PFA. If the PFA approves the application, funding would be provided in cooperation with the Bank of North Dakota.

USE OF PROCEEDS: To provide short term funding for a political subdivision while the entity is waiting for reimbursement from either the federal or state government or to provide cash flow financing until sufficient tax revenues have been received to meet the local match requirements.

TERMS: The terms of the bonds will be flexible maturities with a low interest floating rate structure priced off of LIBOR.

FEES: Bond counsel fees ranging from \$250 to \$1,000 dependent upon size of issuance.

COLLATERAL: The political subdivision must show ability to repay the financing either from Federal or State government disaster payments or from tax receipts.

This special disaster assistance financing available under the Capital Financing Program is being offered until December 31, 2011.

To download a Disaster Financing Application form, go to our website: www.ndtoa.com



Grass Roots Report

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