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Right of Way Encroachment... Why Worry?

North Dakota Department of Transportations Local Government Engineer, Dave Leftwich, in a 2008 memo to the chairpersons of all County Commissioners explains:

Because it's against the Law !!!!

North Dakota Century Code 24-05-33 clearly states that a land owner who encroaches on county roads or ditches is liable to the county for such acts.

If a land owner fails to pay the county for the damages caused, the costs may be charged to the taxes levied against the land in the same manner as other real estate taxes.

If Federal Funds were used on a road, most project agreements prohibit encroachment. Sargent County Commissioners pointed out that whether or not federal funds were used on the roads, encroachment is still against the law.

In our new green township handbook, on page 56 under 24-06-27, North Dakota Century Code says that any person who obstructs or in any way injures any ditch, opened as provided in section 24-06-26, is liable to pay

the overseer of highways of such road district double the damages caused by such injury. The law goes on to say that the violator is guilty of a Class B misdemeanor and civil damages caused.

If you are aware of violations of these laws, it could be in your best interests to report them to your County Commission and/or your township overseer of the roads.

Township Annual Meeting Day

This year the state office in Broomfield was inundated with the following question: ***Can we hold our annual meeting on a different day other than the third Tuesday in March ?***

North Dakota Law in 58-04-01 on page 184 of our green handbook says, *"The electors of each township annually shall assemble and hold a township meeting on the third Tuesday in March."*

No other day is legal! Notice of the time and place of the meeting must be given by the township Clerk at least 10 days prior to the meeting by publication in a legal newspaper in the township or, if there is no such newspaper, in the county's official paper.

North Dakota law goes on to say in 58-04-05 the qualified electors present on the day of the annual meeting or special meeting must be called to order by the township clerk, or, if he is not present, the qualified electors may elect by acclamation one of their number to act as chairman and clerk for the purpose of calling the meeting to order and to act as clerk after the selection of a Moderator. This clerk, chosen in the absence of the township elected clerk (called the clerk of the meeting), shall keep full minutes of the proceedings.

All actions taken on any other day are illegal such as tax levies, established priorities and elections.

NDTOA Officers

LARRY SYVERSON, President

465 150th Ave. NE, Mayville, ND 58257
(701) 786-2697
larry@ndtoa.com

ROGER OLAFSON, Vice President

12945 84th St. NE, Edinburg, ND 58227
(701) 993-8765
rlolaf@polarcomm.com

KENNETH YANTES

Executive Secretary/Director of
Governmental Relations & NATaT Director
P.O. Box 104, Brocket, ND 58321-0104
(701) 655-3513 Fax (701) 655-3513
(Please call before sending fax.)
ken@ndtoa.com

BARB KNUTSON, Treasurer

2600 236th St. NE, McKenzie, ND 58572
(701) 673-3198
barbk@ndtoa.com

KERRY SCHORSCH, Past President

6358 111th Ave. SW
New England, ND 58647
(701) 579-4703
kerry@ndtoa.com

FLOYD MILLER, District 1 Director

14954 57th St. NW, Williston, ND 58801
(701) 875-4280
pbfmiller@hotmail.com

RALPH OLSON, District 2 Director

5054 47th St. NE, Maddock, ND 58348
(701) 438-2344

AL BEKKERUS, District 3 Director

1890 12th Ave. NE, Grand Forks, ND 58201
(701) 741-2120

District 4 Director

POSITION OPEN

BARB KNUTSON, District 5 Director

2600 236th St. NE, McKenzie, ND 58572
(701) 673-3198
barbk@ndtoa.com

STEVE GINSBACH, District 6 Director Alternate NATaT Director

16290 91st St. SE, Hankinson, ND 58041
(701) 242-7291
steve@ndtoa.com

Legal Counsel

THOMAS R. MOE

Attorney-at-Law
39 1st Ave. NW, Mayville, ND 58257

President's Message

by Larry Syverson

Hello Township Officers.

Thank you to those that took the time to attend a workshop, county meeting or transportation conference in the last several months.

For us there have been many miles put on and meetings attended. I got a chance to visit with many friends, township officers, county officials and legislators, and made many more acquaintances as we traveled the state.

We found there is a lot of support for the resolution from the 2009 annual meeting that mud on roadways and snow piles be added to the law as obstructions so townships would be able to force the removal or charge costs against taxes. We already have legislators lined up to sponsor a bill to deal with these problems

Another item that came up in several counties was the fines for over weight loads, under state law all fines collected go to the state, so if a county buys a portable scale and hires an officer to run it, they can't even recoup those expenses.

In order to protect our county and township roads it will be necessary for more enforcement to be done at the county level. At present we have joined with the Association of Counties to oppose a contrary proposal that would preclude home rule counties from retaining over weight fees and to support the proposal to broaden fee retention by local authorities state wide.

Proposals to retain over weight fees in the jurisdiction that owns the road are being drawn up; these would provide the needed funding for the enforcement and also contribute to the repair of damages.

Over the last two weeks a series of eight transportation conferences

was held across the state, I attended several and Ken Yantes attended all of

them. We wanted contact with those township officers from about the state that are concerned with transportation problems. We also spoke with many county officials as well as legislators and NDDOT personnel about the transportation issues in the various areas where those conferences were held.

One of the main topics of the conferences was the priority system that the NDDOT has had in place for several years and now several counties have also developed their own road priority system.

Other counties expressed an interest in doing a formal priority system so they can have a map to show their constituents just what roads and bridges will be receiving the highest levels of maintenance and why.

We told them that most townships have long been doing an informal priority system based on need, we only plow snow off the roads that are needed in the winter, and we gravel the roads that show gravel loss from heavy use.

Our budgets have always been small and dollars too short to spend on blanket maintenance, we also have roads designated for minimum maintenance.

It would still be a good idea for each township to develop a formal plan and map it to show your residents and taxpayers, and also give a copy of your plan map to your county highway department so they can try to match up their priority system.



Cont'd on page 4

Executive Secretary's Corner

by Ken Yantes

Is your township getting their Highway Distribution Funds ? What happened to the one cent gas tax?

I would like to provide you with some information on these subjects as the office has received a few questions on them recently.

In the 2009 Legislative Session, SB2012 was passed which traded our one cent gas tax for a 2.7% share in the Highway Users Fund. This bill allowed the ND Department of Transportation to first take \$5.5 million out of the Highway Users Fund to administrate the balance of the fund between cities, counties, townships and other transportation providers.

I will use Normal Township as an example township in this article. All financial figures will not be the same as your township but the percentages should be close.

When most bills pass the legislature they take affect on July first of that legislative year and so it was with the change of the township funding part of SB2012.

The first two quarters of 2009 are considered the last two quarters of the 2007-2009 statutory funding period. This means that the funds township received for the first two quarters of 2009 were actually paid out of the one cent gas tax dollars, as in the past. This means that our old one cent gas tax ended on June 30th and the new 2.7% from the Highway Users Fund started to accrue on July 1, 2009.

The next quarter's funding (October 1st allocation) came from the Highway Users Fund (the Department of Transportation took their \$5.5 million right off the top

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and this left the rest of us to share a smaller amount) so your township only got \$760.69 for the first quarters distribution. However, the next quarters distribution was \$1021.78 and in the future it should be growing. The old gas tax used to bring in about \$815 per quarter so there has been an increase but not exactly the 32% that we had hoped for . . . but close to it.

Many counties have not changed their accounting systems to indicate that the township funding is coming from the Highway Users Fund. They

left the term "one cent gas tax" at the head of the column in their system so it looks like gas tax is still where the funding is coming from, but it is not. Some County Auditors have not made a change in the column heading and why do it? It is coming from the same source and is distributed in exactly the same manner.

I hope this helps you to understand a pretty mixed up jumble of government activity. The only consolation is that federal procedure is even worse.

Special Announcement: NDTOA holds Western Conference

The NDTOA Board of Directors will be meeting at 8 a.m. in Belfield, ND on June 19 at the Trapper's Kettle. Township Officers and County Commissioners are invited to join us for the afternoon at the Pavilion at 1:30 p.m. Along with other items, we will be discussing how to set up a county association, how to merge several townships into one, and the benefits even unorganized townships receive from NDTOA lobbying efforts.

This is a chance for our western townships to meet with the board and discuss the challenges and opportunities that energy development brings. Your lobbyists want your input as they prepare for the coming legislative session.

If you are interested in attending please contact Larry Syverson or Ken Yantes as final arrangements were still being made as of this printing.

Belfield is at the junction of I-94 and ND-85.

Statewide Transportation Meetings

by Ken Yantes

The ND Township Officers Association has again participated in the ND Department of Transportation Public Input meetings in eight different towns in North Dakota during the month of April.

These meetings were held to gather public input on the level of service the citizens of North Dakota want to be provided with.

The Director of the ND Department Of Transportation, Francis Ziegler, his top staff members and members of the Upper Great Plains Transportation Institute joined the Transportation Coalition to put on this series of eight meetings.

The Coalition consists of members of the following organizations that are deeply concerned with the future of transportation in ND: The Association of Counties, League of Cities, Dakota Transit Association, ND Petroleum Council, ND Motor Carriers, ND Wheat Commission,

Associated General Contractors of ND, The ND Corn Growers Assn. and The North Dakota Township Officers Association.

Officials from the North Dakota Department of Transportation and The Upper Great Plains Transportation Institute brought forward facts and figures concerning the costs of maintaining our present transportation system. The devastating effect of inflation (88%) on road repair materials over the last eight years has drained highway maintenance fund coffers.

It was brought to our attention that most roads in ND were built in the 50s and 60s and were designed for single axle truck loads. A normal production of 30 bushels of wheat per acre then caused about 17 billion pounds of crop to be transported.

Now with production of 176 bushels of corn per acre, the crop to

be transported exceeds 62 billion pounds or an increase of 3 times the weight.

Members of the organizations discussed the levels of service they are being provided at present and what they would like to see in the future.

A prioritized road classification system was discussed as well as the current State Highway Performance Classification System already started in 2001. A great deal of time was spent on what could be done to improve or maintain the current road systems for city, township, county and state.

The recommendations from all eight meetings will be compiled and presented to concerned citizens at a statewide meeting in Bismarck at the Kelly Inn on May 17, 2010 at 10:00 a.m. We urge you to attend this meeting.

President's *Cont'd from page 2*

We are often asked by township officers if they have to allow some other concern to construct a road on a section line. First of all, a township doesn't need to spend money developing a road if it is deemed to not be in the best interest of the township.

But what if the other concern is willing to pay for the road? Then the township must determine if such a road would become a liability, as if there is some fact about the route that would make it impossible to keep it safe.

If there is no such safety concern then it would be a matter of construction standards. Give the applicant a copy of the road specifications that they must build to; many townships use county specs for new roads.

Also you can negotiate a maintenance agreement; frequently a heavy user of your roads might be willing to pay the township for the use of such haul roads as part of the agreement that would allow them to build a road they need.

The final say on section line use remains with the Township Board, **under current law**, but please use this authority carefully. Make sure you have a valid reason to deny construction and don't let personal feelings or animosity dictate township policy.

These other concerns have a lot of money at stake and they may well try to get the law changed to limit our power in these matters if it is misused.

We are continuing in our efforts to expand our membership and gain the financial support of counties with

unorganized townships; as even those townships benefit from NDTOA lobbying.

Thank you for being part of grassroots government.

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The Country Lawyer by Thomas R. Moe, Attorney-at-Law

Greetings to all! “Spring has sprung—the grass has riz-o what a wonderful world it is”! I remember this from my school days—Spring still brings magic to us all, I guess! We had a wonderful round of regional workshops and I was happy to see many new, first-time officers in attendance. A highlight for me is always the question and answer session where everyone takes their “shot” at me! I am always amazed at the depth and breadth of the questions you have.

Although we had great attendance this year, it’s always disappointing that more don’t come out. If you couldn’t participate this year, you’re missing your copy of the new updates to our handbook. Your regional director, listed elsewhere in this issue has a supply so give them a call to get your updates, and, try to get to the annual NDTOA convention in December.

Township annual meeting day has come and gone and I trust that all townships in our State participated in this yearly display of grassroots government at its best. Our annual meeting concept finds its roots in the New England town meeting of colonial times; the first being held in the town of Dorchester, MA in the year 1635.

It’s the only form of government where the taxpayers can meet and set their own budgets and tax levies, without the aid of senators, congressmen, or other “well meaning” politicians. Even if no one shows up it’s still important—and required—that North Dakota townships conduct this meeting annually.

Several of you have contacted me regarding the sale of old township halls. There is a distinct procedure to follow and townships should be aware of the law when it comes to disposing of real estate assets.

Upon a proper resolution of authority from the township patrons. See section 58-03-16 NDCC in our handbook for a three step procedure: 1. Supervisors estimate value; if under \$1,000 dollars, then private sale allowed—all other situations a public sale required. 2. If

public sale, then notice in the paper required. 3. With either public or private sale, Electors, (not just the supervisors) must approve the sale.

My concern is that if both the paperwork and procedure is not followed correctly, a future title examiner may well pose an objection to the passing of clear title to the one who purchases the township hall. Usually that objection surfaces in a mortgage situation (for example a loan to buy/finance the quarter—the same quarter where the old town hall once stood); or, in a probate proceeding and it’s not clear if the deceased actually received clear title from the township when the old town hall site was purchased.

Needless to say, several old landmarks out in the country are passing from our memory with the demise of these old buildings, but that is the price of progress. Townships should choose new meeting sites carefully, with an eye towards both handicapped accessibility and the possibility of increased attendance at our meetings.

Several townships meet in the adjacent town, or get together in one of the neighborhood farm shop buildings which are always on one level and generally heated as well.

Spring is a good time to do a road sign survey. Use the forms supplied by the ND Insurance Reserve, or make your own, but document your visit. Carry along a digital camera as well, and snap some pictures. Following are some questions received in the office. See you down the road. TRM

Q. We only had three people at our annual meeting—2 supervisors and the clerk. The other supervisor was in Arizona. Could we legally do business?

A. Yes. There is no quorum requirement for an annual meeting, so in theory, only one person could hold the meeting—not a good idea, though! And, supervisors are not necessarily required to be there either, as this is a meeting of the residents, whether officers or not. This is the meeting that townships are required to have under

our State law, so it’s important to have it on the right day: (3rd Tuesday in March—no exceptions); and, establish the budget for the coming year and elect officers, regardless of the number attending. Townships should be especially careful to follow this annual meeting procedure as it is unique to our various forms of government and we surely don’t want to lose it due to apathy or improper procedure.

Q. We held our equalization meeting in April and after we finished we went right into some other township business. Our clerk said we shouldn’t carry out regular business on equalization day. I and the other supervisors said “we’re here anyway, so why not?” Who’s right?

A. When in doubt, listen to the clerk! The only way to legally do other township business on equalization day is to close one meeting (equalization) and start another (supervisors). The supervisor meeting requires a notice—either in the original equalization notice e.g. “supervisor’s meeting to follow at 8 pm” or at the very least a notice to the county auditor of the additional meeting that day. Don’t get me wrong—I think equalization day is a good time to get together, because “we’re here anyway,” but the problem is making sure there was public notice of that meeting. In fact, equalization day is also a good time to call a special meeting of the township patrons if some item of business was forgotten or once again, a special meeting notice would need to be published as well for this gathering.

Q. Do townships still approve liquor licenses?

A. Liquor licenses (for rural establishments) are the exclusive domain of counties which issue the licenses. But, the law states that no license may be issued “...in any organized township without the written consent of the board of township supervisors.” No indication is given of how that consent is obtained. Section 50-01-07 NDCC.

NDIRF Member Services

The following list, while not all-inclusive, provides a quick review:

INSURANCE PRODUCTS / UNDER-WRITING / CLAIMS / FINANCIAL & INVESTMENT MANAGEMENT

Service to members is the reason for the NDIRF's existence and the items identified above are basic services all NDIRF members expect for their contribution dollar. The term "basic services" is not meant to imply that they are simple or unimportant – they are the heart of the relationship between the NDIRF and its members. Efficient maintenance of these services must always be the NDIRF's first priority.

LIABILITY / SAFETY SURVEYS

The NDIRF maintains two full time staff positions for the primary purpose of providing information and advice regarding exposures to loss that may exist in areas over which members exercise authority. All members with significant premises liability exposures have been visited several times and provided with written survey reports.

TRAINING PRESENTATIONS

The NDIRF sponsors topical presentations each year to various groups of members and their employees. Recent issues addressed include law enforcement liability concerns, employment matters, recreational facility management, ethics in government, volunteer liability issues and veterans' preference laws.

In addition to the numerous training opportunities funded in whole or in part by the NDIRF and provided to members by third parties, NDIRF staff is also directly involved in presenting instruction to Fund members. NDIRF staff routinely present program information on road signing and maintenance, swimming pool safety, skate park design,

employment matters and other issues.

The defensive driving course (DDC-4) taught by NDIRF staff provides this program to members and their employees at no charge. Benefits to the NDIRF, members and their employees include safer drivers, potential workers compensation premium reductions and credits on employees' personal auto insurance premiums.

TRAINING MATERIALS

The NDIRF has made numerous items available to all members over the past several years. For example, the NDIRF Guide is an excellent basic resource for any public entity on a broad range of risk management issues.

The NDIRF sponsors revision and distribution of the ND Township Officers Manual following each state legislative session. This allows an up-to-date reference for township officers on matters directly affecting their responsibilities.

The NDIRF Public Employers handbook has been distributed to over 900 cities, counties, school districts, park districts and special districts. This manual provides a quick reference on proper handling of numerous employment issues and a directory of resources available for more in-depth information.

It has been freshly updated in 2010 and will be available online at www.ndirf.com

An Aquatics Safety Manual has been developed and distributed to NDIRF members with swimming pool facilities.

A brochure on skate park safety and design was developed and is made available principally for the use of NDIRF members who lack staff resources but wish to develop these facilities in their community.

The NDIRF's newsletter, the *Participant*, is focused on providing loss control information to members and agents both directly (in the form of "how-to" segments) and by example (through the examination and explanation of actual claim situations).

The *North Dakota Employment Law Letter* is being provided to 425 NDIRF members. This is an excellent resource for members in dealing with employment issues and subscriptions are targeted toward Fund members with at least a few employees on staff.

The NDIRF Risk Services department periodically publishes and distributes "Check It Out" bulletins to members and agents on matters of topical interest, including coverage changes and risk exposure alerts.

A Public School Employment Contracts Handbook was developed and disseminated to the NDIRF's school district members in 2003 and has also been updated for 2010.

The NDIRF also maintains an current video library, accessible for members through our website, containing training videos on a variety of risk management topics.

LEGISLATIVE ACTION

The NDIRF works on risk-related issues affecting its members during legislative sessions and the interim committee process. These have included public transportation liability; open records and meetings laws; Y2K immunity; state/political subdivision contract indemnification and railroad contractual indemnity issues, among many others.

The NDIRF strives to cooperate and coordinate with representatives of the various statewide associations of its membership, including the NDTOA and solid, mutually beneficial working relationships have been developed over the years.

2010 Educational Workshops Held

By Ken Yantes

Fifteen workshops updating township officers on their duties and responsibilities as locally elected officers were held across North Dakota in February.

The training sessions began in Newburg and were held in Minot, Stanley, Williston, Bowman, Regent, Steele, Larimore, Park River, Langdon, Devils Lake, Jamestown, Lisbon, Casselton and Fessenden.

These educational workshops featured a welcome from the State president of the NDTOA, Larry Syverson, and reports from that area's District Director and State

Treasurer Barb Knutson. Ken Yantes, NDTOA Executive Secretary, discussed the new law changes as found in the update packages for the NDTOA green handbook.

The 2010 update package keeps our membership current with the law changes made in the immediate past 2009 Legislative Session and should be installed in the 2008 edition of our handbook.

Mark Verke, NDIRF Risk Management Specialist, updated us on the latest Supreme Court ruling on section line responsibilities and federal road sign reflectivity

requirements.

Tom Moe, Legal Counsel, held an open forum discussion on legal issues that township officers are presently facing.

This year's attendance at the workshops exceeded two years ago totals by over 100 officers. Many new officers commented on how much they had learned about their duties and responsibilities as township officers.

Our thanks go out to the veteran officers that attended and that added their accumulated wisdom to the discussions.

Treasurer's Report

by Barb Knutson, Treasurer & District 5 Director

It is finally spring! At least in this part of the state it is. So nice to see things greening up, and thank goodness the flooding was not what it was last year.

The dues are coming in at a better rate this year. Thank you for getting that done. A special thanks to all that have sent lists when paying for multiple townships. What a help that is!

Now would be a good time of year to start getting townships to think about getting their dues for next year withheld from monies coming from the county.

If you need that form, it is on

the website:

www.ndtoa.com.

Fill it out and mail to the auditor in your county. Next year you will have your dues paid and not have to worry about collecting from each township.

We appreciate all that each of you has done to keep grassroots government going. It was really nice to see all who turned out for the workshops. Keep up the good work.

If you need help in your corner, feel free to call your board members. We will give our best effort to help. Have a great summer!



Sheryl Ginsbach, 55, Hankinson, ND, died at University of Minnesota Medical Center on March 22, 2010. Sheryl was the wife of District 6 Director Steve Ginsbach.

Sheryl attended many of the activities and annual meetings of the NDTOA in the 12 years she and Steve have been a part of our organization.

Steve and Sheryl had been married for over 36 years, the parents of a son and a daughter and three grandchildren.

Her funeral was March 28 at St. Philips Catholic Church in Hankinson.

On behalf of the North Dakota Township Officers Association, our deepest sympathies and our condolences to Steve and his family.

Reminder

Are your newly elected township officers receiving this newsletter? Be sure to let us know when to add and/or delete a name from our mailing list. Send the following information to:

Darleen Yantes, PO Box 104, Brocket, ND 58321-0104

1. Your name, title, mailing address and phone number.

2. Your township name and county.

3. The name of the person you replaced on your township board.

Thank you for your cooperation!



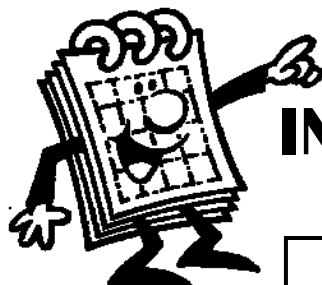
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INFORMATION CORNER

Articles Due: July 31, 2010

PLEASE SEND NEWS ARTICLES TO:

Ken Yantes, Newsletter Committee Chairman
P.O. Box 104, Brockton, ND 58321-0104
ken@ndtoa.com

DATES TO REMEMBER:

MAY 17: Statewide Transportation Meeting Conclusion
(See article on page 4)
JUNE 19: Western Conference at Belfield, ND
(See article on page 3)

PLEASE SEND ADDRESS CHANGES TO:

Darleen Yantes
P.O. Box 104, Brockton, ND 58321-0104
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