

DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

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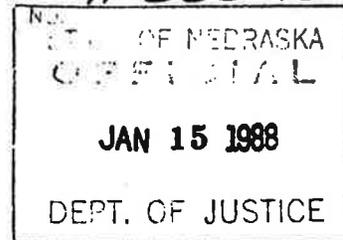
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88002



DATE: January 15, 1988

SUBJECT: County roads, contracts to impound water on.

REQUESTED BY: Senator George Coordsen
Nebraska State Legislature

WRITTEN BY: Robert M. Spire, Attorney General
Warren D. Lichty, Jr., Assistant Attorney General

This inquiry indicates a desire to introduce legislation in case the protection from liability afforded by Neb.Rev.Stat. §§39-1817 to 39-1820 (Reissue 1984) is insufficient. These sections authorize counties to contract with political subdivisions such as Natural Resources Districts, with regard to impounding and storing waters on and across county roads. Present statutory language uses the terms "upon" and "across." The question is whether protection against liability would be increased if the word "adjacent" were added on the theory that it would protect from liability not only when drivers got into water which was upon and across the road, but also when they went off the road to the side into water which was adjacent to it because of such impoundment.

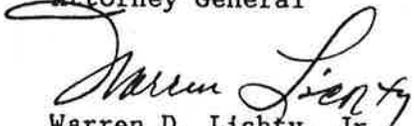
We do believe that protection from liability would be, to some extent, broadened by this addition. This is not to say, however, that your amendment would insure that liability could not accrue in certain cases. For example, if there was found to be any failure of compliance with Sections 39-1817 through 1820, we believe one or both of the parties might be held liable. Or, if it was found that a

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situation is so inherently hazardous, that additional precautions should have been taken, liability could follow from the absence of those precautions.

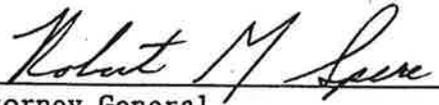
Sincerely,

ROBERT M. SPIRE
Attorney General


Warren D. Lichty, Jr.
Assistant Attorney General

WDL/ta

APPROVED:


Attorney General