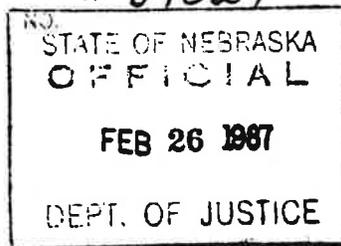


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

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87024



ROBERT M. SPIRE
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A. EUGENE CRUMP
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DATE: February 25, 1987

SUBJECT: Trapping on County Road Right of Ways

REQUESTED BY: Senator Jerome Warner, 1000 State Capitol

WRITTEN BY: Robert M. Spire, Attorney General; Linda L. Willard, Assistant Attorney General

QUESTION: Is a county, either as owner of or easement holder for a county road right of way, required to give consent before anyone may trap on a county road right of way pursuant to Neb.Rev.Stat. §37-510 (Reissue 1984)?

CONCLUSION: No, not when the county holds title to the land in question.

Pursuant to Neb.Rev.Stat. §39-1701 et seq. (Reissue 1984), the county board may take and appropriate property, temporarily or permanently, in fee simple or any lesser degree and in such width as is deemed necessary by the county board. Therefore, the title held by the county to road property and the extent of that title may well vary from county to county and even from road to road within the same county. Property held by the county in a possessory interest would become public property unless restrictions are placed on the use of the property by the county board. That property deemed public property could be accessed by the public at large for any purpose not inconsistent with its primary public purpose. The county board, however, could limit the purpose for which land is used through zoning regulations or other regulations not inconsistent with state statutes.

An individual who places traps on a public right of way could subject him or herself to possible liability for any harm which might befall any other person validly within the same area. Thus, a child travelling along the county road on his or her way to public school who accidentally steps in a trap could sue the individual for placing the trap in an area where it presented a danger.

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Also, a trapper who places a trap along the general right of way of the county road or any other area used for either foot travel or for general maintenance could be cited for criminal assault if an injury occurred therefrom or for criminal mischief.

QUESTION: In situations where the title description of the land shows actual ownership by a private landowner to the center of the road with the county holding an easement for the right of way for road purposes, is either the record owner of the land, the county as easement holder for the right of way, or both required to give consent before trapping may occur on the right of way?

CONCLUSION: Consent must be obtained from the record owner of the land.

An easement is a liberty, privilege, or advantage without profit, which the owner of one parcel of land may have in the lands of another. 28 C.J.S. 619. It is not the complete ownership of land with the right to use it for all lawful purposes perpetually and throughout its entire extent, but it is a right only to one or more particular uses. 28 C.J.S. 621. An easement for a county road exists for the purpose of transportation across the property of the dominant land owner. The public has a right to enter onto the land for the purpose of crossing on the county road. The county also has a right to enter onto the land for purposes of maintenance of the road and any necessary right of way.

The county would have no specific interest in the profits of a land, including the harvesting of fur-bearing animals, unless it is specifically set out in an easement agreement as a right to profits or profits a prendre. In the absence of such an easement agreement, the right to the profits of fur-bearing animals would remain with the record owner of the land and anyone seeking to harvest such animals would have to receive the consent of the record owner of the land pursuant to Neb.Rev.Stat. §37-510 (Reissue 1984). Again, however, anyone seeking to trap along a county road may be subject to the potential civil and criminal liabilities mentioned above.

Senator Jerome Warner
February 25, 1987
Page -3-

Sincerely,

ROBERT M. SPIRE
Attorney General

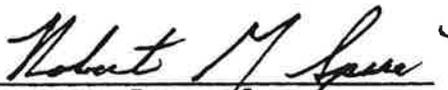


Linda L. Willard
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LLW:bmh

cc: Patrick J. O'Donnell
Clerk of the Legislature

APPROVED BY:



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