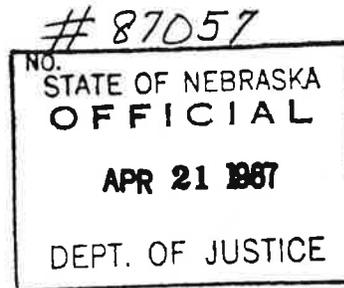


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

TELEPHONE 402/471-2682 • STATE CAPITOL • LINCOLN, NEBRASKA 68509



ROBERT M. SPIRE  
Attorney General  
A. EUGENE CRUMP  
Deputy Attorney General

DATE: April 17, 1987

SUBJECT: County Road Right of Ways

REQUESTED BY: Senator Lee Rupp, Chairperson  
Government, Military and Veterans' Affairs  
Committee

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

You have asked whether an individual placing traps on public lands such as wildlife management areas could be liable for injury to others resulting from the placement of the traps. Our answer is that a person could possibly be liable. Liability would depend on several factors involving, among other things, the placement of the traps and the type of traps used.

Determination of liability would normally involve a reasonable man's determination of whether the trapper placed the traps negligently, maliciously to cause injury to others, or with reckless disregard for the safety of others who may be in the area or that he should have known would be in the area.

Your second question is whether permission must also be obtained from a private title holder of property for activities conducted on the easement other than trapping. Our answer to your second question is yes, permission must be obtained the same as for any other private property except for entry upon the property for these purposes in line with the easement right.

In the absence of any statutes or laws governing trespass on property, the common law would control. See, 28 C.J.S. §1. The common law rights of the title holder would of course depend on the type of interest held by the county. If the interest of the county is merely an easement interest for the purpose of transportation across the land, then the title holder of the property is entitled to all profits of the land including wild flowers, grasses, fruits, berries, and even aluminum cans. If the county title is strictly an easement across the land, then an individual launching a canoe from beneath a bridge would be on

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Senator Lee Rupp  
April 17, 1987  
Page -2-

the property of the title holder and, absent consent, would be trespassing on the title holder's property. This would not affect the right of those who canoe to claim the affirmative defense to trespass contained in Neb.Rev.Stat. §28-522(4) (Reissue 1985).

We stress that the above would be the case where the county has only an easement interest. The rights of the title holder, the county, and the public at large may vary considerably depending upon the nature of the interest held by the county.

Sincerely,

ROBERT M. SPIRE  
Attorney General

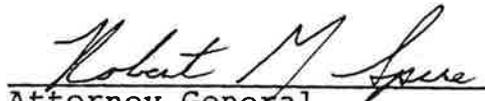


Linda L. Willard  
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cc: Patrick J. O'Donnell  
Clerk of the Legislature

APPROVED BY:

  
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