

DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

ROBERT M. SPIRE
Attorney General

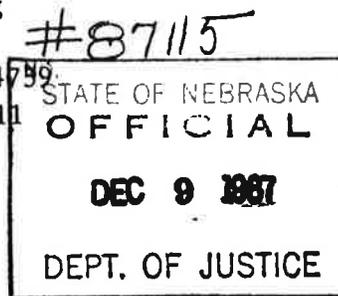
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DATE: December 9, 1987

SUBJECT: Township roads, establishment thereof.

REQUESTED BY: George Rhodes
Custer County Attorney

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

You first inquire whether it is the county or township board which has authority to establish a township road, using only township funds, and what the procedure is for establishing a township road. Neb.Rev.Stat. §39-1704 (Reissue 1984) provides that the township board, if a township road is being established or altered, shall cause the line of such road to be accurately surveyed and plainly marked. Assuming that when you use the word "establish" you mean creation of a road on a new location, the next required step is to acquire the necessary right-of-way on which to build the road. Being unable to discover a right of eminent domain granted to townships, we believe that if voluntary purchases cannot be made, such acquisition can only be accomplished by the county board under the authority of Neb.Rev.Stat. §39-1701 (Reissue 1984). These damages are to be paid from the general fund, as is provided in Neb.Rev.Stat. §39-1522 (Reissue 1984). After the location for the road has been determined and the right-of-way acquired, the contracting to build the road and its appurtenances is to be by and at the expense of the township, as stated in Neb.Rev.Stat. §39-1523 (Reissue 1984), and the authority of article 2, Chapter 23 of the Revised Statutes of Nebraska.

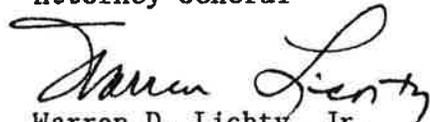
Your second question asks, if authority to establish township roads rests with the county board, what legal means the county board has to prevent a township board from establishing a township road. As heretofore stated, Neb.Rev.Stat. §39-1704 (Reissue 1984) specifically gives the establishment power to the township board as to township roads. Under the aforesaid situation, however, if the county is opposed, it might well just refuse to exercise its power of eminent domain. In such an event, if the township is not able to acquire its right-of-way by purchase, pursuant to Neb.Rev.Stat. §23-223 (Reissue

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1983), there would appear to be no way for the township to proceed. In such a case, it would not be the county stopping progress, but a possible recalcitrant landowner who disagrees with the project and will not sell his land to the township for purposes of the project.

Very truly yours,

ROBERT M. SPIRE
Attorney General


Warren D. Lichy, Jr.
Assistant Attorney General

WDL/ta

Approved:


Robert M. Spire
Attorney General