

DEPARTMENT OF JUSTICE

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Attorney General

STATE OF NEBRASKA

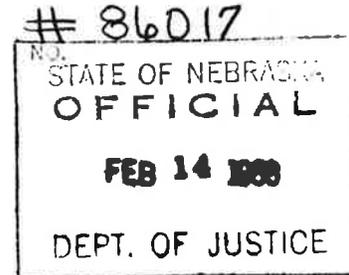
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DATE: January 29, 1986

SUBJECT: Costs of restoration of survey corners.

REQUESTED BY: Louis E. Lamberty
Director-State Engineer

WRITTEN BY: Robert M. Spire, Attorney General
John E. Brown, Assistant Attorney General

In your letter of October 4, 1985, you request an opinion of this office which sets out in detail the responsibilities of the county and the State for survey work made necessary by the reconstruction of a highway. In particular, you state that it is necessary to locate land monuments distant from the highway project by as much as one mile, or more, in order to precisely and accurately calculate land acquisitions for the construction project.

We are of the opinion that the county board is responsible only for the perpetuation of those corners located along a public road which are liable to destruction by public travel, or construction or maintenance. This responsibility does not extend to restoration of distant corners the location of which is necessary for the calculation of land acquisitions.

Neb.Rev.Stat. §39-1708 (Reissue 1984) provides in part as follows:

"It shall be the duty of the county board of each county to cause to be perpetuated the existing corners of land surveys along the public roads and highways where such corners are liable to destruction, either by public travel or construction or maintenance."

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In our previous opinions on the subject of the counties' responsibilities in regard to restoration of survey corners, we have stated:

"It is therefore our opinion that insofar as the perpetuation of corners along public roads and highways is concerned, this is the duty of the county at county expense. Our Opinion of July 22, 1963, is applicable only in situations not otherwise provided for by specific statute."

And,

". . . [T]here is no statutory requirement that a county re-establish corners or cause a survey to be made at county expense merely because corners or a record of survey have become lost. Any party requesting a survey or establishment of section line or quarter section line corners by a county surveyor must pay the cost of same even though a survey has previously been made and corners established and the record of the survey and corners has subsequently been lost or destroyed."

See, Opinion 198, dated April 13, 1964, and Opinion No. 113, dated July 22, 1963.

If the corners sought to be located are corners in the immediate proximity to a public road, and the corners are destroyed by public travel, construction or maintenance, we are of the opinion that the county is liable for the cost of such restoration according to the terms of §39-1708. If it is necessary to locate corners distant from the public road in order to precisely determine the location of the destroyed corners along the road, the expense of that work would be the obligation of the county. If the corners to be located are not in immediate proximity to the road, and are located for the purpose of calculating land acquisitions, there is no specific statute obligating the county to do such work and therefore, the cost of such restoration falls upon the party requesting the survey--in this case, the State.

Your letter also requests an opinion concerning State liability in case of accident involving excavation or survey work being done by either the State or the county forces doing work requested by the State.

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If an accident occurs which involved only county forces while those forces are completing work requested by the State, we are of the opinion that the State has no liability for the personal injury or property damage that may result from such accident. The county must assume any liability brought about by the actions of county employees while such employees are acting within the scope of their employment.

Neb.Rev.Stat. §23-2407 (Reissue 1983) provides as follows:

"Except as otherwise provided in this act, in all suits brought under this act, the political subdivision shall be liable in the same manner, and to the same extent as a private individual under like circumstances, except that no writ of execution shall issue against a political subdivision. Disposition of or offer to settle any claim made under this act shall not be competent evidence of liability of the political subdivision or any employee or amount of damages."

If State employees are involved in an accident during the process of making a survey, and either property damage or personal injury results from the negligence of a State employee, we are of the opinion that the State may be liable for the personal injury or property damage that results.

Neb.Rev.Stat. §81-8,215 (Reissue 1981) provides as follows:

"In all suits brought under this act, the state shall be liable in the same manner, and to the same extent as a private individual under like circumstances, except that no writ of execution shall issue against the state or any state agency, and disposition of or offer to settle any claim made under this act shall not be competent evidence of liability of the state or any employee or amount of damages."

Also, Neb.Rev.Stat. §39-1324 (Reissue 1984) provides in part:

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"The department shall have authority to enter upon any property to make surveys, Entry upon any property, pursuant to this section, shall not be considered to be a legal trespass and no damages shall be recoverable on that account alone. In case of any actual or demonstrable damages to the premises, the department shall pay the owner of the premises the amount of the damages."

Obviously, if property is damaged during the course of a survey by State employees, the State is liable for such damage.

Sincerely,

ROBERT M. SPIRE
Attorney General



John E. Brown
Assistant Attorney General

JEB/ta

APPROVED:


Attorney General