

OFFICIAL OPINION NO. 69-48, Bridges and culverts in unorganized county. Duty to construct, replace or repair is on County Commissioners. SDC 1960 Supp. 28.1403 (SDCL 1967 31-14-27) SDC 28.0107 (SDCL 1967 31-1-4); SDC 1960 Supp. 28.0238 (SDCL 1967 3-1-5) a

STATE OF SOUTH DAKOTA
OFFICE OF
THE ATTORNEY GENERAL

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Floyd E. Meidinger
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Leola, South Dakota 57456

OFFICIAL OPINION NO. 69-48

Bridges and culverts in unorganized county. Duty to construct, replace or repair is on County Commissioners. SDC 1960 Supp. 28.1403 (SDCL 1967 31-14-27) SDC 28.0107 (SDCL 1967 31-1-4); SDC 1960 Supp. 28.0238 (SDCL 1967 3-1-5) and SDC 28.0408 (SDCL 1967 31-12-26)

Dear Mr. Meidinger:

You have requested my official opinion in answer to this question:

"1. Does the \$200.00 limit on payment by an organized township for construction and replacement of a bridge or culvert on a secondary highway, as provided by SDC 1960 Supp. 28.1403 (SDCL 1967 31-14-27) apply to such construction and replacement of a bridge and culvert in an unorganized township?

"2. If such \$200.00 limit does not apply, who pays for bridges and culverts on secondary highways within unorganized townships?"

SDC 1960 Supp. 28.1403 (SDCL 1967 31-14-27) which provides reimbursement up to two hundred dollars for the construction or replacement of a bridge or culvert on a secondary highway, by its very language limits such to such secondary highways within organized townships.

SDC 28.0107 (SDCL 1967 31-1-4) classifies the public highways of the state to be (1) streets and alleys within the limits of municipal corporations; (2) State Trunk System; (3)

the county highway system, and (4) "all other highways which are denominated secondary highways."

SDC 1960 Supp. 28.0238 (SDCL 1967 31-1-5) for purposes of clarification distinguishes and defines (1) the state trunk system; (2) county highway system; (3) township highways, and (4) county secondary highways. It is apparent from such definition that township highways are limited to secondary highways within organized townships. It is apparent that such secondary highways within unorganized townships come within such definition of "County Secondary Highways."

SDC 28.0408 (SDCL 1967 31-12-26) provides:

"It shall be the duty of the Board of County Commissioners and County Superintendent of Highways in organized counties . . . to construct, repair and maintain all secondary roads within the counties **not included in any city, incorporated town, or organized civil township.**" (Emphasis added.)

It is my opinion from these statutes, that the duty to reimburse the county up to two hundred dollars for such bridges and culverts, as either are constructed or replaced in the secondary system, is limited to organized townships.

Question 1 is answered NO.

A careful reading of SDC 28.0408, above quoted, leaves little doubt that the duty to maintain all secondary highways within an unorganized township, rests exclusively on the County Commissioners and the County Highway Superintendent. This seems in accord with **Van Berpen v. Gemill**, (1948) 72 SD 265, 33 NW 2d 278, where the court held that such section placed no duty upon the county or its highway department to construct and maintain highways on a secondary highway within an organized civil township.

As the duty to construct, repair and maintain secondary highways within unorganized townships lies with the county, it is my opinion that the county must bear the full expense of constructing, repairing or replacing a bridge or culvert on a secondary highway within the confines of an unorganized civil township.

Respectfully submitted,

Gordon Mydland
Attorney General