



LEGAL INSIGHTS

By John Delzer, Attorney

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This article is an overview of a topic that has been brought up by many townships in eastern South Dakota this summer: what to do about all the trees/shrubs growing in the right-of-way?

RIGHT-OF-WAY OBSTRUCTIONS. It is well known that grass and weeds growing in township rights-of-way are mowed typically before October 1 of any given year either at the landowner's expense, or at the expense of the township provided that the township board decides in that particular year to bear the cost of mowing the township rights-of-way.

What isn't as well known is that South Dakota Codified Law § 31-31-2, and 31-31-5 specifically mentions that trees are to be removed along with grass and weeds by October 1 of that year or the date fixed that year by the board of supervisors.

While it is obvious each year while traveling down the roads of any given township by mid-October that the grass and weeds have been neatly mowed down, it is equally obvious while traveling throughout some of these same townships that the trees and/or shrubs have not been removed, with some of the trees growing being older than most township supervisors. This issue has grown each year (along with the height of the trees) to the point where many roads are impassable with farm machinery, campers and other large vehicles due to the tree branches encroaching onto and over the road. As these trees are very large in many instances, the cost of removal of these trees is quite expensive, and consequently a financial burden on many landowners.

When asked if the township has the authority to hire a contractor to remove the offending trees from the right-of-way, I answer that according to the statute, the answer is yes, pursuant to SDCL 31-31-5. However, given the significant expense involved in removing the trees, particularly if they have gotten large, I think the more prudent decision for a board of supervisors to make is to send out a letter to all landowners (and a courtesy letter to all farming tenants) detailing the issue, citing the

South Dakota Codified Laws that pertain to the issue, and then giving the landowners a reasonable period of time (1-3 years) to remove the offending trees/shrubs.

If the trees/shrubs are not removed by that time, the township would then intend on hiring the removal by a contractor and adding the cost of the removal to the landowner's property taxes through the County Auditor. By giving landowners some time to plan for and budget for the removal of some larger offending trees/shrubs, the townships can ultimately obtain what they desire which is obstruction free right-of-ways without having to resort to the legal remedy of assessing the cost to the landowner's property taxes all in one year.

With the natural growing obstructions removed, there is still the subject of the man-made obstructions that have been placed in the right-of-way in some townships. I intend on addressing those concerns as well as other issues at the Towns and Township Association Annual meeting on December 3 and 4, 2020. I hope to see you all there.

This article is not intended to provide legal advice to our readers. Rather, this article is intended to provide some common-sense answers to complex legal questions.

If you have specific questions you are encouraged to contact the attorney of your choice, or me, John Delzer of Delzer Law Office at Phone (605) 983-9900. All other questions should be placed through the SDATAT office by calling 605 353 1439 or email to: sdatat@sdtownships.com

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