

GRASS ROOTS REPORT



SUMMER 2015

The Official Newsletter of the ND Township Officers Association

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NEW Phone Number for NDTOA Office: 701-430-1735

NDTOA Delegation Attends Multi-State Conference

By Larry Syverson, Executive Secretary

Several members of the NDTOA Board of Directors attended the annual multi-state conference on July 20 and 21. It was hosted this year by the South Dakota Association of Towns and Townships and held in Brookings SD. There were 50 attendees from the Dakotas, Minnesota and Wisconsin.

There was one individual from Nebraska in attendance representing the Nebraska LTAP. His interest was to see how our state organizations operate as Nebraska has some 300 organized townships but no state or county associations.

Gary Pedersen (Minnesota Executive Director), Tom Moe and I took great pleasure in giving him a quick primer in county and state organization. He was interested in the dues structure and how to establish the address list database. Gary learned that Minnesota has a dues structure based on township population while we have flat rate dues.

I told him that we get our list of township officers and addresses from the county auditors and from those we build our membership/ mailing list. I then found out Nebraska has county clerks, not auditors, but the purpose is the same.

It was interesting that while the area of Nebraska is similar to ND, they have 93 counties. So perhaps their counties might be more able to be more responsive to resident needs than our larger counties can be. In fact, they have one county that is six miles by six miles—in other words—a township.

We might become so used to our organizations that we take them for granted, but when someone from the outside says “*I wish we had that*”, perhaps that interest should serve as a wake up call that it’s something worth some effort to maintain.

The program included a rather chilling presentation on “*Active Shooters*” by officers of the Brookings Police Department. They outlined key indicators that could signal that an individual who could become a threat. There were recommendations that could save your life if you ever face such a situation. Vigilance is needed even in rural America.

Slightly less exciting was a presentation by two engineers with the SDLTAP, “*Road Maintenance and Management for Today's Traffic Needs*”. They went over the desired specs for road gravel and the key seems to be getting the ratio right so there is enough clay to hold the

rocks in place to minimize the loose material without becoming slimy when wet.

They also described the use of magnesium chloride as a gravel stabilizer which also serves as a dust suppressor. When properly applied and incorporated with the specified grade of gravel it will hold up without even periodic blading for more than a year on roads carrying over a thousand vehicles a day.

The gravel will last for many years where it would otherwise need replacement every couple of years. I haven't heard of anyone being that happy with mag-chloride use here. Maybe we have to check how the methods and materials used compare to the South Dakota methods.

The cost of that mag/chloride treatment runs \$7,000 to \$8,000 per mile, but making a gravel road stand up to 2,000 vehicles per day with little maintenance for years after could prove to be a wise investment.

That presentation will be made available on the SDATAT website: sdtownships.com

John Ball, SDSU tree expert, presented “*Trees and their influence on Township Roads*”. He has analyzed accidents involving trees and the

Cont'd on page 3

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President's Comments

Hello everyone!

Seems like Mother Nature is providing several fireworks shows of her own lately, along with many heavy localized downpours.

First off, a big thank you to Larry Syverson and his son for making a couple trips to Brocket to retrieve NDTOA belongings and the van from Ken Yantes.

Several years worth of files etc. that Ken has accumulated. Anyone who has been at Ken's house has seen how much personal living space was taken up by having the NDTOA office in his home.

Larry will now face the same issue and the same can be said for Barb Knutson as the treasurer job and mail list upkeep job also take up a huge amount of space in her home.

We learned that John Oxton, a past president of NDTOA, recently passed away. John was also very active in NDTOA affairs for many years and played a big role in building NDTOA into the organization it is today.

As this newsletter is being organized and printed several Board of Director members will be attending the Multi-State Conference in Brookings, SD. A report on this conference may or may not be available in time for this issue.

The convention committee is working on developing the program for the annual NDTOA convention in Minot in December.

If you have any ideas for speakers or agenda items please let your district director

know of them.

If you are in a county that has no organized County Township Officers Association or have one that is not very active, we may be able to help you get one going again. Check with your district director for that.

Having county associations is an extremely effective way for us to get information out to township officers and to learn of their concerns as we try get a board member to their meetings if we know of the meeting.

NDTOA, along with Larry Syverson working the legislative approach, is trying hard to address issues concerning townships all across the state.

We do not believe in any east vs. west or oil producing vs. non-oil producing approach to satisfying the needs that are out there. If anyone tries to tell you anything different, treat their comments with extreme skepticism.

Any legislator worth his salt will tell you that having a unified voice from a statewide organization is critically important to proposals brought before the legislative assembly.

Let's do our jobs diligently and keep our form of Grassroots Government alive and well.





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www.nd.gov/surplus

Oil & Gas Impact Grant Program

*Submitted by Gerry Fisher
Administrator, Claims and
Grants Division*

The 2015 Legislative Assembly appropriated \$139.3 million of the oil and gas impact grant fund (OGIGF) for grants in House Bill 1176. The legislation identified specific allocations of the grant program during the 2015-2017 biennium.

The Energy Infrastructure and Impact Office (EIIO) is in the process of developing a grant schedule and basic guidelines for grants during the 2015-2017 biennium.

However, we want you to be aware that funding is limited until tax money is collected. The Gross Production Tax (GPT) on oil production finances the OGIGF and initial biennium collections will not reach the fund until September 2015.

If it is expected the OGIGF will not

achieve full funding until late 2016 or early 2017 dependent upon GPT collections. Also, state law limits that not more than 60% the OGIGF appropriation can be awarded by the Land Board in a fiscal year.

The EIIO will be contacting key stakeholders in advance of the grant round to begin work on jointly developing grant round specific procedures and requirements before the grant round is announced.

A grant schedule and guidelines will be provided on the EIIO website as it is finalized.

Please recognize that while grants might be awarded to allow projects to proceed, the EIIO provides money on a reimbursement basis with evidence of project completion and as funds are available.

If you have questions, please feel free to contact us at:

**energyimpact@nd.gov
701-328-2800**

ND Department of Trust Lands

Items that townships could qualify for:

◆ \$5 million of this fund will go to eligible political subs, counties, cities, organized townships and other taxing districts in the seven oil producing counties that received less than \$5 million in gross production tax allocations from September 1, 2013 through August 31, 2014.

◆ \$6.8 million of discretionary grants for needs as determined by the Land Board.

Please note, the Claims and Grants Division of the Land Board uses the NDTOA address list, so make sure your current officers are listed with their correct address.

Nowadays the address must be perfect or the mail is not delivered.

Multi-State Meeting *cont'd from page 1*

liability of the township for allowing trees in or near the right-of-way. His message: ***While no trees should be allowed in the right-of-way, trees within 20 feet of the roadway are most dangerous and must be removed.***

Also dead trees or branches that could fall on the roadway must be removed, even if the base of the tree is outside the right-of-way.

He has also analyzed the influence of trees on snow accumulation and recommends that the setback for trees needs to be 150 feet, especially for the north or west sides of the roadway.

There were also presentations on township liability claims and disputes by EMC insurance and the

on the Value Added Agriculture Development Center by its Executive Director.

The conference ended with reports from each of the attending states—a common complaint from the other states was the shortage of money for transportation infrastructure and the resulting deteriorating conditions.

I guess we have been very lucky that North Dakota has been able to do a better job of maintaining and upgrading our infrastructure.

Wisconsin reported that many of their roads are paved and designed for a 20 year life but with the shortage of funds for transportation they will have to serve for decades longer. Adding to this problem, the huge manure haulers from the dairy

operations can totally destroy a 20 year road in as little as two years.

Minnesota reported that noxious weed control had also been affected by the shortage of funding. Like us, they also had a problem with an Assessor Qualification Bill that requires a great increase in training. It was pushed by the counties because they want to take over all assessing

We compliment SDATAT on the great content of the program and thank them for their hospitality.

Special congratulations to the South Dakota Executive Director, Maureen Wegenke on a great first conference.

The Country Lawyer

by Thomas R. Moe, Attorney-at-Law



Greetings to All!

It's the middle of Summer, and I'm still not ready for the season. I've only got half my garden planted, so my guess all my plans for different plants to try and grow will have to be on hold until next year. But then, sometimes it is better to put off until tomorrow what you are likely to mess up today.

Several of your NDTOA Board of Directors recently attended the four-state towns & townships conference in Brookings, South Dakota. I was once again privileged to participate as well.

Now it has been said that a conference is a meeting at which people talk about things they should be doing, but this group reviewed all of their respective legislative accomplishments at the various state legislatures, and I was quite impressed with several of the initiatives that had been approved by and for township government.

Resistance to higher load limits on secondary roads seemed to be of great concern for townships in both Wisconsin and Minnesota, while South Dakota's legislature spent time on similar issues as we have here in North Dakota.

I enjoy visiting with other officials I especially enjoyed a presentation by one of SD State University's horticulture professors as he led an impressive discussion on trees in road right of ways. And his opinion that new tree plantings should at times be at least 150 feet away from roads in order to alleviate snow drifting problems onto roads.

This is something all townships should consider, and create a setback provision in zoning ordinances so trees don't become a problem.

I understand many townships are applying gravel this summer, and it is good to remember that the gravel applicator is responsible to place warning signs, etc., if the work is intended to take a while to complete.

Make sure the contractor is aware of liability concerns for gravel piles/windrows. Special care should be considered if loose gravel or equipment is left overnight. See question below about this topic.

We also had a good presentation about gravel and the application of magnesium chloride at the South Dakota meeting, and we can get that information to you if anyone is interested.

Many townships have taken advantage of our suggestion to have monthly supervisor meetings during the summer months. This helps to get bills paid on a more timely basis. Once a regular meeting is pre-scheduled, it is a lot easier to request a citizen to appear before the Board at its meeting which will occur fairly soon, rather than putting them off for several months.

And, those monthly meetings also cut down on the endless telephone complaints that seem to come in at all hours—in other words, appear before the board with the complaint rather than dealing with just one supervisor at a time.

I would be remiss if I didn't make note of the passing of past NDTOA president, John Oxton. "Big" John was my mentor when I first started with the association and he helped out this "wet behind the ears" attorney quite a bit.

He was in effect, the first Lobbyist for NDTOA, and one of my first jobs was to assist him and the rest of the Board with getting the one-cent gas

tax for townships through the legislature.

He talked me into staying on with the association and to go along and make presentations at the regional workshops slated for that year, and the rest they say is history.

As one of the founders of NDTOA, his mark is on a lot of the things we do today within the association. His knowledge of the legislative process and his ability to interact with the politicians of either stripe was legendary. He was a fine gentleman and I shall miss him.

Here's hoping everyone has a safe summer season and for some of you, a safe early harvest. Remember that all the safety devices on our cars, trucks, and equipment can be replaced with one careful operator

Following are some recent questions received in the office. TRM

Question: We need to have special meeting this summer to get authority to spend some additional money for a project. Can we also talk about zoning at that meeting?

Answer: Yes, as long as your notice for the meeting (at least 10 days prior newspaper notice) has that specific agenda item listed. See Section 58-04-04 in your handbook—*"...no business other than specified in the notice may be transacted at such meeting."*

Question: We have a request to place a water line in the ditch of one of our roads, and the adjacent landowner doesn't want it. He says that the supervisors don't have the

authority to allow the placement, and that a meeting of the township residents is required. Is he right?

Answer: While it's never wrong to have a full township meeting on any issue, see Section 58-06-01 which is the list of the general powers and duties of township supervisors which has about 20 items.

Specifically, item #10 which states supervisors have the power "...to grant to any person the right of way for the erection of telephone lines, electric light systems, water or wastewater systems, or gas or oil pipeline systems over, under, or upon public grounds, streets, alleys, or highways."

Now, obviously, supervisors would not have the power to grant permission beyond the standard 33 foot right-of-way, as that would require the private landowner's permission.

Question: What are road contractors required to do as far as warning signs when repairing our roads? Or, is it the supervisors' responsibility to put up signs?

Answer: See Section 24-03-09 of your handbook, which outlines the contractor's responsibility to place warning signs and devices. It is the supervisors' responsibility to see that the contractor carries out that requirement, and it should be stated specifically in the written contract. (Yes, make sure there is a document!) that the contractor is responsible. Most contractor's insurance carriers also require proper signage at the site as well.

Question: Can a township lease a motor grader?

Answer: Yes, see Section 24-06-07. You may need a copy of this law to show the leasing company, and they may also require a copy of the motion allowing this budget expense. Many leasing companies require a copy of the township meeting minutes allowing this, so that

means it should be an item on the annual March meeting agenda.

I know of several townships that have gone together and jointly entered into such a lease agreement—if that is the case, then an agreement between those townships should also be formulated—to include provisions for sharing expenses for operations and maintenance, in addition to the sharing formula for the lease payments.

Question: We have an old fence line that runs right down the center of a prairie road. The land has now changed hands, and the new owner would like the fence removed to allow better access to his field, but the owner of the fence refuses to remove it. Can we force him to do so?

Answer: Yes. A fence can be erected in the manner that you describe with township permission—which I suspect was granted years ago by the then township board—and probably orally. As the years passed, each succeeding board tacitly approved the fence by in essence doing nothing.

Fast forward to the present time and the supervisors could now order the fence removed, just as the first board years ago could have done, but chose not to. See Section 24-06-30 which deals with "Removal of Fences".

Written notice has to be given to the landowner along with a thirty day period in which to accomplish the removal. After thirty days, the board can remove the fence and charge the cost back on the landowner's taxes.

If you suspect problems, I would suggest the notice be made by certified mail, and probably even notify the sheriff of the removal date.

Question: Should supervisors have workmen's compensation coverage?

Answer: Yes, especially if the supervisors/officers do any kind of

physical work at all on the roads—even inspections require getting out of the car and checking culverts, signs, etc. All it takes is a fall and a trip to the emergency room with a sprained ankle and the nature of injury is readily defined as "job related". The price for coverage for the supervisors is fairly reasonable and is a prudent investment.

Question: We pay our officers so much per year. Our neighboring township pays quarterly, but for every day of service during that quarter. It's a lot easier to pay once a year—are we wrong in doing so?

Answer: Not necessarily. It's okay to pay officers just once per year, but the law requires a daily rate be set. In other words, it doesn't matter when, or how often, the payments are made, but the officers should keep track of how many days served and then could be paid an annual lump sum, but computed at the daily rate which the annual meeting should set.

P.S. Officers can be paid up to the maximum daily rate of \$60 per day—there is no minimum rate

Grassroots Government Leadership Award Nominations Needed

With nearly 6,000 township officers serving almost 1,200 townships, there has to be a bunch of officers that deserve individual recognition for putting extra effort into the job!

The last few years we haven't been getting any nominations for the award.

This year the Board of Directors decided to start the application process earlier. You will find the application online: www.ndtoa.com or write or call Larry Syverson. See page 2.

Please help us give those officers the recognition they deserve.



In Memoriam, John B. Oxton

John B. Oxton, 78, Hope, ND, died Friday, July 10, in the Luther Memorial Home in Mayville, ND.

John was an ardent advocate for townships and the North Dakota Township Officers Association. Besides serving as the Association's 6th President in the years from 1979-1983, he was also our Director to the National Association of Towns and Townships for 1980-1981. From 1979 to 1994 he lobbied extensively in the state legislature for the townships and was instrumental in securing dedicated state funding, one cent per gallon of gasoline sold, for townships.

He was the NDTOA Mr. Township Award Winner in 1989; Runner-up for National Grassroots Leadership Award, 1990. He was always at work for the NDTOA, either serving on a committee or performing some supporting work. He served on the Handbook Committee that did the 1990 revision of our NDTOA Township Officers Handbook, He did most of the research and compilation for that book. John developed and then maintained the association mailing list on his computer for many years. Putting together a list of 6,000 township officers addresses from across the state was quite a project, and keeping that list current took a lot of dedication.

John was active on several other boards throughout his life. He was the assessor of Colgate Township, 1957-1998; Board of Directors Hope Fire Protection District, 1962-2000; President of Steele County Township Officers, 1973-1978; Board of Directors, International Coalition of the Red River Valley, 1984-1995.

During his retirement, John continued to keep busy assisting with the Hope Fire Department Charitable Gaming and researching the Hope Cemetery maps.

John's work played a very important part in building the North Dakota Township Officers Association to what it has become today.

June 1, 2015

I would like to introduce myself. My name is Donna Bye and I am the North Dakota Planning Association President for 2015-2016.

I currently work as the City Planner in Minot and have been in that position for over 14 years. The NDPA Board consists of many individuals from across the state serving in positions of VP, Sec/Treasurer and at large members.

They represent communities and counties in the Killdeer (Dunn County), Stanley (Mountrail County), Munich, West Fargo, and Fargo areas.

The North Dakota Planning Association was formed in 1973 and strives to be a forum for a diverse population across the state, region and county. It serves professional planners, economic developers, state agency staff and

officials, region council board members, city and county planning board members, private individuals, businesses and utilities.

Over the years, the North Dakota Planning Association has provided a place for an exchange of ideas, educational opportunities, legislative information and lobbying activities, and kept its membership informed on the current topics of concern across the state.

In response to today's pressures of change, the North Dakota Planning Association is developing training opportunities for members as well as non-members.

The NDPA's mission is to encourage and promote the fraternity, the improved technical quality, and interchange of planning thoughts of those engaged and interested in local, regional, state and functional planning in

North Dakota; to assist in furthering public understanding of the objectives and functions of the planning process; to speak as a representative voice of planning in North Dakota, keeping both private citizens and officials more accurately informed as to professional opinion on contemporary problems and issues involving planning; and to assist in objective analysis and evaluation of vehicles and means of strengthening the planning process.

Please browse our website at ndplanning.org to see just how involved the township members can be. And please join us at the ND League of Cities conference this year in Fargo in September.

*Best regards, Donna J Bye
Minot City Planner
Chief Resilience Officer*



Treasurer's Report by Barb Knutson

District 5 Director, NDTOA Mail List

Time for another newsletter. Seems we just did the last one, but that is how summer is flying by also. Thanks to all that have sent dues in for this year in a timely fashion. There are still a few that are missing. The due date was May 1 and the delinquent date is Oct. 1. Just a reminder.

Time again to update the mailing list for new officers. I have really appreciated the calls and emails throughout the year that helps keep me up to speed on that.

When you are providing the county with officer lists, it is very helpful if you include a cell phone # and an email address for all officers when available.

Also, it is important that you include all officers, newly elected and holdovers, even if the board has been the same conscientious people for the past 20-30 years, and there are still some boards out there like that.

This is also a good time to be thinking of honoring someone that has been a great benefit to townships

by getting their story and name sent in to the association for the Grassroots Leadership Award to be given out at the annual meeting.

It is not too early to think about the annual state meeting coming up in December. This year it will be held in Minot on December 7 & 8th. More information to follow on registration. Hope to see many of you there!

Thanks for all the work you each do out in your corners. It is very important to all of us.



WORKING FOR YOU!

Misclassified Employees Get Two Bites at the FLSA Apple

The 8th Circuit recently ruled that employees who settled claims with their employer for unpaid overtime could still pursue claims seeking more back wages even though they signed releases and cashed their settlement checks.

When a Settlement Doesn't Settle Things

ActionLink designated some of its employees known as "brand advocates" as exempt "outside salesmen" under the Fair Labor Standards Act (FLSA). As a result, the company didn't pay those employees overtime even though some of them worked up to 75 hours a week. After investigating a complaint, the U.S. Department of Labor (DOL) persuaded ActionLink to reclassify the brand advocates as nonexempt and therefore eligible for overtime.

The company also agreed to pay back overtime wages to each brand advocate who had been misclassified. The reimbursement check given to the affected employees contained the following disclaimer:

"By cashing this check, the employee to whom [this payment] is made is agreeing that he or she has received full payment [for] wages earned, including minimum wage and overtime, up to the date of the check."

A number of the brand advocates cashed the settlement checks. However, a group of them, including some who had cashed their checks and some who hadn't, brought FLSA claims for unpaid overtime against ActionLink in federal court. ActionLink settled with the plaintiffs who had not cashed their checks, while arguing those who had cashed the checks had waived their FLSA claims.

On appeal, the 8th Circuit found that the waivers on the settlement checks weren't valid because the employees didn't have adequate notice of the rights they were actually waiving. The waiver "made no mention of the FLSA, waiving legal claims, or any additional damages to which the employees may be enti-

tled," all of which are mandatory components of a valid settlement release under the FLSA.

The case was sent back to the trial court to allow the employees who had cashed their settlement checks the chance to pursue their claims. *Beauford v. ActionLink, LLC*, 781 F.3d 396 (8th Cir., 2015).

Bottom Line

Many federal and state employment laws have very precise requirements for a valid release of claims. If you use a release like the one in this case, you probably won't find it to be a helpful shortcut through the regulations; more likely, it will lead you to a dead end. It's better to call an experienced lawyer to steer you in the right direction.

Reprinted courtesy of the North Dakota Employment Law Letter. For subscription information, please call 800-274-6774 or click to www.HRhero.com.

Submitted by NDIRF



Grass Roots Report

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RETURN SERVICE REQUESTED

Congratulations to Denise Brown!

Denise Brown, Training Coordinator for the North Dakota Local Technical Assistance Program, was just selected as the new Vice President of the National Local Technical Assistance Association at their annual conference in Savannah, Georgia. Denise is a regular part of our annual convention program and also our workshop tour. Several of our county associations have had her speak at their meetings.

Congratulations Denise!



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