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Digest of Attorney General Opinions

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DIGEST OF ATTORNEY GENERAL OPINIONS

DISSOLVING INACTIVE SCHOOL DISTRICT — JURISDICTION

December 4, 1963

Whose responsibility is it to dissolve inactive school districts and attach them to a district operating a school?

The opinion states: "The 1963 Legislative Assembly transferred the authority to dissolve the districts in question from the Board of County Commissioners to the County Reorganization Committee." The bill took effect on March 18, 1963.

If the Boards of County Commissioners did not, at that time, provide for the dissolution and attachment of these districts or issue an order (so providing) at a later date, it is our opinion that they lost jurisdiction and the County Reorganization Committee now has jurisdiction over this matter. In these instances the County Superintendent of Schools should give notice of the fact these districts are not operating schools to the County Reorganization Committee so that such Committee may provide for the dissolution and attachment of these districts as required by law."

PROPERTY ADJOINING BOULEVARDS — DUTY OF MAINTENANCE AND LIABILITY FOR PERSONAL INJURY

December 9, 1963

Who has the obligation to remove, cut and trim trees on city boulevards, and who should bear the expense?

Does the city have primary liability for injury that might occur on these boulevards as a result of the trees planted thereon?

The opinion states: "It seems clear to us that under the provisions of sections 40-32-01 and 40-05-01 (8) of the North Dakota Century Code the City may by ordinance prescribe rules and regulations for the laying out and maintenance of boulevards on which trees, grass, and flowers may be plant-

ed, grown and nurtured. Without such an ordinance, the city could enforce the provisions of Chapter 40-32, and if the abutting lot owner does not comply with the proper resolution or order of the governing body, the City may go in and accomplish the purpose of Chapter 40-32 and assess the cost against the lot owner....It is our opinion that the lot owner has the primary responsibility for maintaining the boulevard and the City is charged with the ultimate responsibility should the lot owner neglect to discharge his obligation."

With reference to liability for injury, the opinion states: "In this state the theory of governmental immunity is followed. However, it is our opinion that Chapter 40-42 takes actions of this nature out of the realm of governmental immunity....It is a duty incumbent upon a City to maintain its boulevards in a reasonably safe condition, and a City is answerable in damages for the lack of ordinary and reasonable care in so doing."

STATE HOSPITAL — DETERMINING TREATMENT

December 6, 1963

Whether a relative or guardian has the right to dictate the type of treatment given a patient at the State Hospital.

The opinion states: "The State Hospital was established to provide care and treatment for the mentally ill with the objective of having them cured and restored to society to again resume their useful purpose and position....The superintendent and his medical staff determine the medical treatment to be given a patient committed to the State Hospital...The guardian, next of kin, or blood relative does not have the right to dictate to the medical staff of the hospital the type of treatment the patient is to receive."

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