

# Farming the "Right of Way" Is Against the Law...

Over the past year, the State Association and our office seem to be asked on a more frequent basis questions in regards to farming of the ditch and destruction of the roadways. Just recently we were involved in a small claims lawsuit on behalf of a township. A particular landowner's slow but steady farming of the right-of-way damaged the road. The township sued to seek recovery of the repair costs after the landowner refused to cooperate in reconstructing the road. The Court awarded the township a judgment for the cost of repairing the road.

In the event your township is confronted with a similar situation, I would suggest letters be sent to the offending landowners requiring them to make the repairs, giving them a deadline for doing said repairs, and taking photographs both before and after. Remember legal action can only be taken after a majority vote of the board. It is imperative the board make the proper motions and document those actions in your minutes. Also be sure you keep copies of all letters and correspondence with any offending landowners.

I would also suggest prior to initiation of such legal action, a discussion be held with your local State's Attorney. There are criminal statutes that make it a crime to destroy the roadway and the ditches. If a prosecution is done, then not only is there a fine but a stronger argument can be made for punitive damages pursuant to South Dakota law.

It is our recommendation if you have any questions, call the State Association or the attorney of your choice.

**Jay M. Leibel, Attorney**