The Iowa Code and Roadside Management
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Disclaimer: This presentation is not legal advice. Nor is it intended to be an exhaustive discussion of the topic. It is meant to be a hopefully useful overview of some of the Iowa laws related to roadway easements. It should not be used as a substitute for consulting with your county attorney on these matters.

What do I do?

• I do a lot of in-house counsel work internally for the ISAC organization.
• But I also work with our members to provide education and information.
  – I think of my role similar to that of a reference attorney (IRS example)
  – No attorney-client privilege, as we do not do direct representation
What can I do for you?

- Affiliate work.
- Where do I find it questions.
- Magazine article suggestions.
- Questions referred to me by your county attorney.
- ISAC Litigation Committee.

What does right-of-way mean?

First we have to know, what is included in the ROW?

306.3 Definition throughout Code.
As used in this chapter or in any chapter of the Code relating to highways:
7. “Public road right-of-way” means an area of land, the right to possession of which is secured or reserved by the state or a governmental subdivision for roadway purposes. The right-of-way for all secondary roads is sixty-six feet in width, unless otherwise specified by the county board of supervisors of the respective counties.

318.1 Definitions.
As used in this chapter, unless the context otherwise requires:
3. “Highway right-of-way” means the total area of land, whether reserved by public ownership or easement, that is reserved for the operation and maintenance of a legally established public roadway. This area shall be deemed to consist of two portions, a central traveled way including the shoulders and that remainder on both sides of the road, between the outside shoulder edges and the outer boundaries of the right-of-way.

*Need to find the county documentation to determine the size of the ROW and the type of interest the county has in the ROW land.
What are the common ways ROW are owned?

Fee simple: Typically, this means that all property rights are transferred to the county. The county owns the ROW, full stop. The adjacent landowner does not have any rights to the easement.

Easement: There are a lot of different types of easements, but the general idea with an easement is that the county has the right use the land for roadway purposes and the individual agrees not to do anything on the land that conflicts with this use. But the individual still owns the land and thus may have more rights associated with what can happen in the ROW than if it is in a fee simple to the county.

I. Mowing

314.17 Mowing on interstates, primary highways, and secondary roads.

Mowing roadside vegetation on the rights-of-way or medians on any primary highway, interstate highway, or secondary roads prior to July 15 is prohibited, except as follows:

1. Within two hundred yards of an inhabited dwelling.
2. On rights-of-way within one mile of the corporate limits of a city.
3. To promote native species of vegetation or other long-lived and adaptable vegetation.
4. To establish control of damaging insect populations, noxious weeds, and invasive plant species.
5. For visibility and safety reasons.
6. Within rest areas, weigh stations, and wayside parks.
7. Within fifty feet of a drainage tile or tile intake.
8. For access to a mailbox or for other accessibility purposes.
9. On rights-of-way adjacent to agricultural demonstration or research plots.
Integrated Roadside Vegetation Management Plans

• It is declared to be in the general public welfare of Iowa and a highway purpose for the vegetation of Iowa’s roadsides to be preserved, planted, and maintained to be safe, visually interesting, ecologically integrated, and useful for many purposes. (Iowa Code 314.22)
  — Strong statement of support for your work.

Integrated Roadside Vegetation Management Plans

Iowa Code allows, but does not require, counties to adopt their own integrated roadside vegetation management plan consistent with the state’s plan. (Iowa Code 314.22(2))

Having allows your county to be more involved in making decisions in the right of way. Otherwise, default rules apply.
Example:

• 317.11(2):

Nothing shall prevent the landowner from harvesting, in proper season on or after July 15, the grass grown on the road along the landowner’s land except for vegetation maintained for highway purposes as part of an integrated roadside vegetation management plan.

Another Example:

In addition, Iowa Code Section 317.13 requires a county to require permits for burning, mowing or spraying of roadsides by individuals. The county board of supervisors shall allow only that burning, mowing, or spraying of roadsides by private individuals that is consistent with the adopted integrated roadside vegetation management plan. This subsection applies only to those roadside areas of a county which are included in an integrated roadside vegetation management plan.
A word of caution...

The language of these statutes has changed frequently over the years, so always double check current Code language!

A recent change: In 2018, a bill was passed that removed language throughout the Code that prohibited spraying to only be used when mowing wasn’t practical.

How much can a county cover when dealing with “weeds”?

- Weeds can include shrubbery and bushes.
- Trees are not weeds.
- See Iowa Code Section 314.7 and Iowa Code Chapter 317.
III. Activities in the ROW - Obstructions

“A person shall not place, or cause to be placed, an obstruction within any highway right of way.” Iowa Code Section 318.3

• What is an obstruction? “An obstacle in the highway right-of-way or an impediment or hindrance which impedes, opposes, or interferes with free passage along the highway right-of-way, not including utility structures installed in accordance with an approved permit.” 318.1(4)

Removal of Obstructions

Iowa Code Section 318.5 allows a county to remove obstructions – this can be done by the county in the following ways:

- without notice or liability in damages if the obstruction constitutes an immediate and dangerous hazard
- after 48 hours notice

Either way, the cost of removal may be assessed against the person responsible for the obstruction. IF they don’t pay within 10 days of being sent a statement of the cost, the county may institute legal proceedings to recover.
Removal of Obstructions (cont)

Special rules for
• billboards and signs (Iowa Code Section 318.11)
• Utility structures (Iowa Code Section 318.9)
• Fences (Iowa Code Section 318.10)
• Trees (Iowa Code Section 314.7)

Changes to the ROW

318.8 Permit required.

A person shall not excavate, fill, or make a physical change within a highway right-of-way without obtaining a permit from the applicable highway authority. At the request of a permittee, a modification may be granted in the discretion of the highway authority. Work performed under the permit shall be performed in conformity with the specifications prescribed by the highway authority. If the work does not conform to permit specifications, the person shall be notified to make the conforming changes. If after twenty days the changes have not been made, the highway authority may make the necessary changes and immediately send a statement of the cost to the responsible person. If within thirty days after sending the statement the cost is not paid, the highway authority may institute legal proceedings to collect the cost of correction. A violation of the permit specifications shall be considered a violation of section 318.3. A public utility subject to section 306A.3 is exempt from this section.
OK, but what do I do when a landowner violates these laws?

Specific authority to institute legal proceedings:

• 318.8 (as just discussed related to permit compliance in ROW changes)
• 318.12 generally allows a county to enforce the provisions of Chapter 318 (related to obstructions in the ROW) by “appropriate civil or criminal proceedings or both such proceedings.”
• Weeds: 317.1C requires Department of Agriculture and Land Stewardship to assist counties in the enforcement of the chapter. (new in 2018) But 317.9 ultimately puts the onerous of enforcement on the board of supervisors.
  – But then 317.23 and 317.24 actually allow citizens to complain to the county attorney that the weed commissioner isn’t doing his or her job and such neglect is a simple misdemeanor.
  – Landowner penalties for failure to comply: 317.16 (enter the land and do the work, impose a maximum penalty of $10 per day (up to 10 days), and/or assess the cost of work). 318.21 provides a process to collect penalty and costs via special assessment on the real estate.
• This is an area where you should involve your county attorney.

Working with your Board of Supervisors

• Who has the power within the county?
  – This is a common question in county government, and not one easily answered.
  – County government is set up as horizontal leadership structure, as opposed to the vertical leadership structure in most private businesses.
  – 317.3 gives BOS quite a bit of supervisory power over weed commissioners:
    • Term at discretion of BOS
    • BOS sets compensation of commissioner and deputies
    • 317.4 – commissioner shall supervise the control and destruction of weeds, subject to direction and control by BOS.
Questions?

• Thank you for your time! Please contact me if you think of questions later: (515) 369-7014 or kharshbarger@iowacounties.org