

OFFICIAL OPINION NO. 68-7, Dedication of State Property for Highway Purposes

STATE OF SOUTH DAKOTA  
OFFICE OF  
THE ATTORNEY GENERAL

July 12, 1968

Maj. Gen. Duane L. Corning  
The Adjutant General  
Rapid City, South Dakota 57701

OFFICIAL OPINION NO. 68-7

**Dedication of State Property for Highway Purposes**

Dear Maj. Corning:

You have requested my official opinion as to the authority of the Adjutant General to dedicate a portion of the Camp Rapid Military Reservation as a public highway within the City of Rapid City. You have advised that a portion of this property belongs to the Rapid City Independent School District, a portion is privately owned, and a portion is owned by the State of South Dakota and is within the boundaries of Camp Rapid. You have advised there would be material benefits to Camp Rapid from the construction of the road where it has been proposed.

The general rule on the subject of the dedication of lands by public corporations is found in McQuillan, Municipal Corporations, Volume II, Section 33.12 to 33.21. In Section 33.14 the following is stated as a quote taken from Elliott on **Roads and Streets**, Fourth Edition, Section 160 with cases cited therein:

" ... The State or the United States may, of course, make a valid express dedication of a way, through lands of which it is the proprietor. All public corporations, unless prohibited by statute, have power to devote to the public use for streets and roads, lands of which they are owners and they may make dedication by grant or in the manner prescribed by statute."

This matter has previously been considered several times by several Attorneys General and I will attempt to summarize some of the more applicable opinions on the subject. Generally speaking, they have held that there must be compensation for any dedication of public ways. See 1939-40 AGR 45, 1943-44 AGR 251. In this opinion they stated that it "might be

an abuse of discretion on the part of the Board of County Commissioners to donate the right of way across tax deed land in any case on the theory that such donation was in the public interest and in particular to the interest of the county."

This opinion, however, was thereafter modified in 1943-44 AGR 344 as follows:

". . . Such dedication or conveyance without consideration would not necessarily involve an abuse of discretion in every case. Thus if it reasonably appeared, under all facts and circumstances, the property traversed by the proposed right-of-way would be benefited more than damaged by the establishment and maintenance of the highway so that such property might be more readily sold and for a larger amount than otherwise, thus promoting the purpose of the trust in securing greater benefits for the several interested taxing districts, including the county the dedication or conveyance without compensation might clearly be granted without abuse of discretion."

The procedure to be used in granting an easement over state owned property is discussed at length in 1957-58 AGR 170, which directs itself to the provisions of SDC 28.0109 and 28.0110 together with the application and procedure to be followed as provided in SDC 1960 Supp. 55.0207. A Proposal and Offer similar to that found on page 171 of the 1958 Report would be equally applicable in the situation you have described. Likewise, as expressed on page 172 of the same Report, you, as the administrative supervisor of Camp Rapid, should request the conveyance of such lands for street and public highway purposes under authority of SDC 28.0109 and submit this request to the Commissioner of School and Public Lands under SDC 1960 Supp. 55.0207.

I concur with the procedures stated in the third paragraph on page 172 of the 1957-58 Report concerning the requirement for appraisal should you, in your judgment, consider the benefits to be derived by the property to constitute a valid consideration for the transfer of this property.

There should also be the reversionary clause in such conveyance as prescribed in SDC 28.0110 but this would be handled by the Commissioner of School and Public Lands at your request.

Respectfully submitted,

Frank L. Farrar  
Attorney General