

OFFICIAL OPINION NO. 69-46, Jurisdiction of state and municipality on city streets

STATE OF SOUTH DAKOTA
OFFICE OF
THE ATTORNEY GENERAL

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Morris G. Hallock, Director
Dept. of Highways
Pierre, South Dakota 57501

OFFICIAL OPINION NO. 69-46

Jurisdiction of state and municipality on city streets

Dear Mr. Hallock:

You have requested an official opinion from this office based upon the following factual situation:

"There are many extensions of the State Trunk Highway System that are routed through municipalities over dedicated streets. The State Highway Department is responsible for construction and maintenance except for snow removal of the State Trunk System through municipalities. Municipalities are responsible for zoning, building setbacks, city streets, sidewalks, sewer lines, waterlines and other utilities on city streets pursuant to statute."

You have then presented the following question:

"What is the responsibility or jurisdiction of the state and municipality relative to state highways routed over city streets?"

The answer to this question will turn on the legislative intent of statutes delegating authority to the State Highway Commission and municipalities and any Supreme Court decisions relative thereto.

SDC 28.02 encompasses the authority delegated to the State Highway Commission by the Legislature. The Legislature has empowered the Commission with exclusive authority for

construction, maintenance and supervision of the State Trunk Highway System, except in municipalities which are responsible for snow removal within the city.

The Legislature in Title 45 has also delegated authority to municipalities for zoning, building setbacks, street improvement, sidewalk improvement, sewer line and waterline improvement, etc., all affecting the use of dedicated streets in the municipality.

SDC 28.0101 defines a highway as:

"Every way or place of whatever nature open to the public, as a matter of right, **for purpose of vehicular travel**, is a highway . . . The word 'road' or 'highway' whenever used in this title shall be construed to include bridges upon or which form **a part of the road or highway constructed, maintained or to be improved...** " (Emphasis supplied.)

The Legislature has classified the different highway systems in this state and the jurisdiction over same in SDC 28.0107 and SDC 1960 Supp. 28.0238. Municipalities have jurisdiction over streets and alleys, State Highway Commission over the State Trunk Highway System, and County Commissioners over the County Highway System, etc.

In the case of **Van Gerpen vs. Gemmill, et al**, (SD) 33 NW 2d 278, the Supreme Court, in reference to the various highway systems in the state, has said:

". . . We refer to this duty of the township board for the purpose of showing that the Legislature has directly placed upon this board the duty and responsibility for the construction, repair and maintenance of secondary roads, in the same manner that it has placed such responsibility for the County Highway System upon the county highway superintendent and the board of county commissioners by SDC 28.03, and upon the State Highway Commission for the State Trunk Highway System, SDC 28.02. We thus have a unified scheme for the development, and improvement of the highways of the state which contemplates a division of burden and responsibility between township, county and state. **Hanigan v. Minnehaha County et al**, 47 S.D. 606, 201 NW 522. Other than specific exceptions, which have no present application, such as that found in SDC 28.0312 wherein it is provided that the county commissioners shall maintain any secondary highways according to any agreement made by it in consideration of federal aid received for construction and improvement of such highways we believe the legislative plan for the division of responsibility with reference to the various types of highways offers no opportunity for the court to hold that there are over-lapping duties and responsibilities

among the different boards. A holding that there are overlapping duties and responsibilities other than those expressly fixed by the legislature would not be, in our opinion, in accord with the legislative plan and would amount to confusing that which is now reasonably clear . . ."

In the case of **Hurley v. Rapid City** (SD), 121 NW 2d 21, the Supreme Court has stated:

". . . To sum up, the Legislature has paramount control over all the public highways of the state, including city streets and county roads and it may exercise it directly, may delegate the power and once delegated, may recall it . . ."

It is, therefore, my opinion there is no over-lapping authority or jurisdiction on extensions of the State Trunk Highway System over city streets. The state has responsibility over the physically constructed way open for vehicular travel from curblineline to curblineline upon a dedicated street. This mayor may not encompass the entire dedicated street. On streets where there is no curb and gutter, the state has responsibility over the constructed and maintained way open for vehicular traffic. The municipality has jurisdiction or is responsible for that part of the dedicated street that does not contain the physically constructed way for vehicular travel.

The Legislature has seen fit to delegate different responsibilities to the state and municipalities, which will remain separate delegations of authority until such time as the Legislature changes same.

Respectfully submitted,

Gordon Mydland
Attorney General