

OFFICIAL OPINION NO. 75-16, Bridges-boundary line, county and municipality

January 30, 1975

Mr. Ralph A. Kemnitz
State's Attorney
Haakon County Courthouse
Philip, South Dakota 57567

OFFICIAL OPINION NO. 75-16

Bridges-boundary line, county and municipality

Dear Mr. Kemnitz:

You have asked for my opinion based on the following fact situation:

Haakon County is informed of a certain bridge within said county which requires extensive repairs in order to be made safe for continued use. That bridge extends across a tributary of Bad River known as North Fork, which borders the city of Philip, in Haakon county, on the south and on the west in the southwest quadrant of that city.

While there is some question as to the precise corporate limits of the city of Philip, due to conflicting records in that respect, it would appear most likely that the city limits extend to and follow the nearest bank of the river.

The bridge, and the road on either side thereof, is reported to have been originally constructed by private parties who owned land on either side of same, and has been in use for more than twenty years. The county has in the past performed some limited maintenance on the road to the west of the bridge, and on the bridge itself.

The road extending from the bridge to the east, or city side, is not a platted street, though it does lead to a platted city street, and apparently exists only at the forbearance of the private party over whose property it extends inasmuch as no record can be found of any easement or dedication to public use.

Similarly, the road extending from the bridge to the west, or county side, is not a designated part of the county highway system, nor does it lead to or connect with any road that is a part of such designated system, and again, it would appear to exist at the discretion of the owner of the land it crosses, unless the users thereof may be said to have acquired an easement by prescription.

The bridge presently serves some three rural families who have other, much less convenient, access to the city from their respective property, no route of which appears to be over any road that is designated part of the county highway system.

Since the county has been requested to undertake the extensive repairs necessary to make this bridge safe for use you have presented the following questions:

(1) Does the county have the duty to expend public funds for the repair of this bridge?

(2) If so, is the county's duty exclusive, or mutual with the city of Philip?

(3) If the county's duty is mutual, to what extent is the city of Philip liable for the cost of repairs, i.e., do the city and the county contribute equally, or otherwise?

Based on the foregoing facts, the question is whether this is a public highway or a private road. A prescriptive easement has probably been established by the traveling public who have used this road for over twenty years. While there is no indication the county has maintained, worked and repaired this road for twenty years, SDCL 3-3-1 does not state that this must necessarily be done by a governmental agency and would appear to establish this road as a public way.

Assuming this is a public way, then SDCL 31-12-26 would establish the county as responsible for this road and bridge, as well as SDCL 31-14-2.

The facts do not establish this as a boundary line highway and bridge as contemplated in SDCL 31-17-16.

The city of Philip does not have responsibility for the bridge as it is outside the city and not on the city street system. SDCL 31-1-5 would eliminate any overlapping jurisdiction between highway systems.

If the county commissioners decide to repair and maintain the bridge and road instead of closing it, I recommend they take appropriate action to clarify the easement for highway purposes of record.

Respectfully submitted,

WILLIAM J. JANKLOW
ATTORNEY GENERAL

WJJ:QC:rw