

Official Opinion No. 81-33, County Responsibility over Platted Subdivision Roads

October 6, 1981

Mr. Craig D. Grotenhouse  
Lawrence County State's Attorney  
Lawrence County Courthouse  
Deadwood, South Dakota 57732

Official Opinion No. 81-33

### **County Responsibility over Platted Subdivision Roads**

Dear Mr. Grotenhouse:

You have requested an official opinion from this office in regard to the following factual situation:

#### **FACTS:**

A group of Lawrence County citizens have requested that the Lawrence County Commissioners maintain all the roads located within their subdivision. The subdivision plat was formerly approved by Lawrence County.

Based on the above facts, you have asked the following questions:

#### **QUESTIONS:**

1. Does Lawrence County have any of the responsibilities designated under SDCL 31-12 over roads existing within subdivisions recorded by plats pursuant to the provisions of SDCL 11-3?
2. Does Lawrence County have responsibilities over platted subdivision county secondary highways?

#### **IN RE QUESTION NO. 1:**

The Legislature has delegated responsibility for the construction, maintenance, etc., of state roads to the State Department of Transportation, the counties, townships and municipalities

of this state. There are no overlapping duties and responsibilities among the different governmental entities.

Van Gerpen v. Gemmill, et. al., 33 N.W.2d 278 (S.D. 1948).

Unless a road falls within a county's delegated area of responsibility, the county has no duty or responsibility to maintain a road. Under SDCL 31-12-9 it is the duty of the county to maintain the county highway system within the county and any secondary highways that the county, in consideration of federal aid, has agreed to maintain. The county highway system is defined under SDCL 31-1-5 as those highways designated by the Board of County Commissioners and approved by the Department of Transportation as 'county highways.' The county is also responsible, under the provisions of SDCL 31-12-26 to construct, repair and maintain all secondary roads within the county not included in any city, incorporated town or organized township. Finally, a county may be responsible for other secondary roads through general elections placing the responsibility for construction and maintenance upon the county. See SDCL 31-12-28 and SDCL 31-12-31.

If a platted subdivision lies within an organized township, a city or incorporated town, the county is only responsible for those roads under SDCL 31-12-19 it was responsible for before the subdivision was platted. The county has no added responsibilities. This is emphasized by statute in SDCL 11-3-12 concerning platting which states in part:

No governing body shall be required to open, improve, or maintain any dedicated streets, alleys, ways, commons, or other public ground solely by virtue of having approved a plat or having partially accepted any such dedication, donation or grant.

If the platted subdivision lies within an unorganized township, the county would, under SDCL 31-12-26, have the added responsibility for all secondary highways within the subdivision. The county, however would not be responsible for the other streets, alleys and roads within the platted subdivision unless and until they are designated as secondary highways under SDCL 31-3-22 through 31-3-37. As noted in 1953-54 A.G.R. 16, concerning organized township responsibilities, SDCL 31-1-4 classifies highways of the state, and under this definition the streets and roads within a platted subdivision are not secondary highways unless so designated. This Opinion further states that the duty and responsibility for maintaining these subdivision streets and roads is upon the abutting landowners. The responsibility in this case would also fall upon the abutting landowners of the subdivision.

IN RE QUESTION NO. 2:

For the reasons stated to the prior question, the county's responsibility for the secondary highways within the platted subdivision is in accordance with the provisions of SDCL 31-12-19 and 31-12-26.

Respectfully submitted,

Mark V. Meierhenry  
Attorney General