

Official Opinion No. 83-17, County Road District Elections

April 18, 1983

Mr. Roger Tellinghuisen  
State's Attorney  
Lawrence County Courthouse  
Deadwood, South Dakota 57732

Official Opinion No. 83-17

### **County Road District Elections**

Dear Mr. Tellinghuisen:

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

#### **FACTS:**

There has been some interest in Lawrence County concerning the organization of county road districts under SDCL 31-12A. Research indicates that the provisions of this chapter, especially those pertaining to elections have not been previously interpreted by the Attorney General's Office or the courts.

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

#### **QUESTIONS:**

1. Does 'assent of landowners' under SDCL 31-12A-6 mean assent of all landowners or only resident landowners?
2. If a parcel of land within the proposed county road district is owned jointly or by an entity such as a corporation, partnership, or trust, how many votes are the owners entitled to?
3. If a landowner owns more than one parcel of land, is that landowner entitled to only one vote or one vote for each parcel?

4. Does SDCL 31-12A-2 in requiring an accurate survey and map of the territory intended to comprise the boundaries of a proposed county road district contemplate a new map and survey? If not, may a registered surveyor's affidavit be used to verify the boundaries of a proposed county road district where the proposed boundaries are encompassed within a previously recorded plat?

IN RE QUESTION NO. 1:

SDCL 31-12A-6 states:

If the board of county commissioners shall be satisfied that the requirements of this chapter have been fully complied with, it shall make an order declaring that such territory shall, with the assent of the landowners as provided in § 31-12A-10, be an incorporated paving district by the name specified in the application. Such name shall be different from that of any other road district in this state. It shall also include in such order a notice for an election of the landowners in the proposed road district, at a convenient place or places therein, on some day within one month therefrom, to determine whether such territory shall become an incorporated road district.

There is no statutory definition of 'landowner' in SDCL 31-12A-6 or in the other sections in that chapter. Under the general statutory construction provision of SDCL 2-14-4, however, it is required in interpreting a particular word to use definitions provided elsewhere in the South Dakota Code. There are several similarly constructed definitions of landowner. One of these definitions is included in SDCL 38-7-2(7) which states:

A 'landowner' or 'owners of land' shall include any South Dakota resident person, firm or corporation, public or private who has legal title to ten or more acres of land, lying within a district organized, or to be organized as shown by the records in the offices of the register of deeds and the clerk of courts of the county in which such land is situated; and if such land is sold under a contract for deed, which is of record in the office of the register of deeds of such county; both the landowner and his individual purchaser of such land, as named in such contract for deed, shall be treated as landowners;

Except for the restriction that a landowner own ten or more acres of land within a district, I find that this definition is applicable to county road districts and therefore SDCL 31-12A-2 should be construed as pertaining only to the assent of resident landowners. See also, A.G.R. 80-65.

IN RE QUESTION NO. 2:

The first portion of the question concerning jointly held property has been answered by one of my predecessors in 1967-1968 A.G.R. p. 472 concerning watershed district elections. I hereby adopt this opinion which determined that if the land was owned in joint tenancy each landowner is entitled to vote in the elections under SDCL 31-12A-2. Joint ownership, however, would not apply to a corporation which is a separate legal entity. A corporation is only entitled to one vote regardless of the number of shareholders that make up the corporation for parcels of land of which the corporation is legal owner. It is also my opinion that a partnership also would only be entitled to one vote regardless of whether it is a limited or general partnership. Finally, if a trust itself owns property, only the legal owners of the property or its representative can vote. In making the above determinations of ownership one looks to the register of deeds and clerk of courts office for proof of ownership.

IN RE QUESTION NO. 3:

It is my opinion that the Legislature in SDCL 31-12A-6 contemplated only one vote per resident landowner regardless of the amount of land owned or the number of parcels within a proposed county road district.

IN RE QUESTION NO. 4:

SDCL 31-12A-2 states:

Any landowner making application for the organization of a road district shall first obtain an accurate survey and map of the territory intended to be embraced within the limits of such road district, showing the boundaries and area thereof, and the accuracy thereof shall be verified by the affidavit of the surveyor.

The Legislature in adopting the statutory provision set forth specific requirements that an accurate survey and map showing the boundaries of the proposed county road district verified by an affidavit of the surveyor be obtained. If existing accurate surveyed plats have been previously recorded with the register of deeds office, the plat map together with an affidavit of the surveyor verifying the accuracy and authenticity of the map should be appropriate. Whether or not a new survey and map needs to be prepared depends upon the ability to define the boundaries of the proposed county road district on the existing

plat. If this cannot be done, a new survey and map would be required. Therefore, it is impossible to specifically answer your question since the result depends upon the particular circumstances.

Respectfully submitted,

Mark V. Meierhenry  
Attorney General