

OFFICIAL OPINION NO. 84-05, Municipal law--vacation of a part of an alley

March 1, 1984

Mr. Charles Poches, Jr.
Fort Pierre City Attorney
Post Office Box 617
Fort Pierre, South Dakota 57532

OFFICIAL OPINION NO. 84-05

Municipal law--vacation of a part of an alley

Dear Mr. Poches:

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

FACTS:

There exists in the city of Fort Pierre a particular alley, 45 feet in width, which was dedicated as a public alley and which has, since the original dedication, been altered by a partial vacation, accomplished in the manner required by law. The portion previously vacated extends across one end of the alley effectively eliminating a public way through that end of the alley area. Commencing at the previously vacated portion and extending along one side of the alley the land/ownership is in Landowner 'X.' On the opposite side of the alley, and situated directly across from Landowner 'X's' ownership interest, the ownership is in persons other than 'X.' Landowner 'X' has petitioner the city of Fort Pierre to vacate the half of the remaining alley on the side of the centerline on which his ownership exists and extending from the previously vacated area to the end of his ownership. Only Landowner 'X' signed the petition to vacate.

Based on the above factual situation, you ask the following questions:

QUESTIONS:

1. May the Fort Pierre City Commission as the governing body of a municipality vacate a portion of an alley as proposed by the petitioner?

2. If so, does the petition require the signatures of any additional landowners; specifically, the owners of the land adjacent to the one half of the alley not being vacated?

IN RE QUESTION NO. 1:

SDCL 9-45-1 vests in a municipality broad power to vacate or otherwise improve, establish and change alleys and to regulate the making of openings and connections therein. This provision together with SDCL 9-45-7 would allow the Fort Pierre City Commission as the governing body of the municipality to vacate the alley in question in a manner like that proposed by petitioner so long as certain procedural requirements are met. See SDCL 9-45-7 through 9-45-13.1. However, it should be noted that the municipality does not have an obligation to vacate in the manner petitioner proposes. SDCL 9-45-1 allows the municipality to declare whether certain property should be vacated and if so the manner of that vacation.

IN RE QUESTION NO. 2:

Once a municipality has determined that certain property should be vacated and the manner of such a vacation, SDCL 9-45-7 must be satisfied. In pertinent part, SDCL 9-45-7 states:

No street, alley, or public ground, or part thereof, shall be vacated by the governing body except upon the petition and consent in writing of all of the owners of the property adjoining the part of the street, alley or public ground to be vacated.

It is established law that a property owner, whose property is "bounded by," "fronting on," or "along" a street or alley for which the public has a mere easement of passage, owns that part of the street or alley directly extending from his property lines to the center of the street or alley. 39 Am.Jur.2d Highways, Streets, and Bridges § 184.

Applying the above law to the facts presented herein leads to the conclusion that the owners of property lying directly opposite of the area sought to be vacated, are adjoining property owners for purposes of SDCL 9-45-7 and therefore must sign the vacation petition pursuant to the aforementioned statute. This conclusion is based on the following:

1. That the alley described herein is a public easement rather than an absolute and unqualified fee in favor of the city of Fort Pierre;
2. That said alley was dedicated equally out of a common tract or plat of land; and

3. That the property owned by parties other than 'X' and situated directly opposite of the proposed vacation area extends to the alley's centerline and _thereby adjoins the proposed vacation area.

Respectfully submitted,

Mark V. Meierhenry

Attorney General