

OFFICIAL OPINION NO. 84-16, Referral procedures for vacation change or location of township highways

April 11, 1984

Mr. Dennis D. Evenson
Attorney for Lowe Township
Post Office Box 276
Clear Lake, South Dakota 57226

OFFICIAL OPINION NO. 84-16

Referral procedures for vacation change or location of township highways

Dear Mr. Evenson:

You have requested an official opinion on behalf of Lowe Township, Clear Lake, South Dakota.

FACTS:

A petition was filed with Lowe Township Board to locate a township road along a section line and pursuant to a survey which established the section line pursuant to SDCL 31-3-6.

The township board approved the location of the highway according to the procedure established in SDCL 31-3-7 to 31-3-9, inclusive.

A petition was filed for submitting the question of whether said highway should be located along the section line to a vote of the electors of the township.

The township board presented the question to the electors at the annual meeting of the township, pursuant to SDCL 31-3-15. The result of the voting of the electors is as follows:

15 electors voted in opposition to the board action in locating the highway along the section line.

8 of the electors voted in favor of the board action of locating the highway along the section line with the survey as originally presented and approved by the board.

The votes cast totalled 23.

Less than a two-thirds majority of the electors voted in favor of the question as presented to the electors to overrule the action taken by the _board.

On the other hand, less than a two-thirds majority of the electors voted in favor of the location of the highway pursuant to the petition and original board action.

Concerning this, you have asked the following question:

QUESTION:

Does SDCL 31-3-15 require a two-thirds majority of the electors to overrule the action taken by the board or does SDCL 31-3-15 require a two-thirds majority of the electors to vote in favor of the board action for the location of the highway?

SDCL 31-3-14, 15, and 16 read as follows:

31-3-14. Six or more electors of the township, aggrieved by the action of the board of supervisors in vacating, changing, or locating a highway may file with the township clerk a notice in writing within thirty days from the making of said order, that they appeal therefrom and desire the question of whether said highway shall be vacated, changed, or located to be submitted to a vote of the electors of the township.

31-3-15. Upon the filing of a notice of appeal pursuant to § 31-3-14, such question shall be submitted to a vote of the electors at the next _regular or special township meeting of the electors, and it shall be the duty of the township clerk in giving notice of such regular or special township meeting to state in such notice that the question of vacating, changing, or locating such highway shall be submitted to a vote of the electors. The result of the vote upon such question shall be spread upon the minutes of the meeting and the decision of the electors upon such question shall be final, and if a two-thirds majority of the votes is in favor of vacating, changing, or locating said highway, the same shall be deemed vacated, changed, or located without further proceedings.

31-3-16. The remedy by appeal to the electors as provided in §§ 31-3-14 and 31-3-15 shall be exclusive of all other remedies.

The vacation, change or location of a highway by township supervisors may be submitted to a vote of the electors of the township. Six electors of the township may appeal vacation, change or location of highways by notice in writing, effecting this vote. Then the statutory mechanism requires the question, not the action of the supervisors, be submitted to a vote of the electors. In this matter the question was whether the highway should be 'located.' The question was submitted. SDCL 31-3-15 requires a two-thirds majority of the votes in favor of the question for passage. Two-thirds of the voters did not favor locating the highway; therefore, it is my opinion the change is not effected.

Respectfully submitted,

Mark V. Meierhenry
Attorney General