

OFFICIAL OPINION NO. 85-50, South Dakota Railroad Authority Deeds

November 26, 1985

Mr. James R. Myers
Chief of Operations
Office of the Governor
State Capitol
Pierre, South Dakota 57501

OFFICIAL OPINION NO. 85-50

South Dakota Railroad Authority Deeds

Dear Mr. Myers:

Your office has requested an official opinion in regard to the following factual situation:

FACTS:

The Register of Deeds has received for filing quit claim deeds by the South Dakota Railroad Authority which contain metes and bounds descriptions. Some of those properties have previously been platted into lots and blocks and, therefore, contain a legal description. SDCL 43-30-16 apparently permits conveyances by the South Dakota Railroad Authority to be described by metes and bounds. However, SDCL 7-9-7 states that the Register of Deeds may not accept for record any deed that does not include a legal description of the property conveyed. SDCL 7-9-10 further requires the Register of Deeds to keep and enter 'a sufficient description of the real estate in each transfer to perfectly identify the same.' In addition to these requirements, SDCL 10-3-31 requires the Director of Equalization to keep a record of all conveyances by description of the considerations shown thereon and SDCL 10-3-32 requires a check of the assessment rolls of real estate for that year and to change upon such list the assessment thereof.

The Davison County State's Attorney can already foresee numerous problems concerning marketable title. It is already known that the metes and bounds descriptions contained in the deeds conflict with existing deeds containing legal descriptions. There are many obvious errors. The utmost solution would be to require the properties to be surveyed and given a legal description. This very problem is probably arising throughout the State and not just

in Davison County, so certainly it would save the people of the State of South Dakota much expense by clearing up the matter now rather than later, especially considering the number of lawsuits which would arise as a result of these deeds.

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

QUESTIONS:

1. May the Register of Deeds refuse to accept for record deeds by the South Dakota Railroad Authority which contain no legal description on the property conveyed?
2. If the Register of Deeds cannot refuse to accept such deeds, then how are they to be recorded without creating numerous problems concerning marketable titles, keeping records current, etc.?
3. Can the South Dakota Railroad Authority convey real property by using a metes and bounds description when that property has previously been given a legal description?

IN RE QUESTION NO. 1:

The question of whether conveyances transferring real property by way of metes and bounds descriptions are entitled to be recorded has plagued this office for many years. A multitude of opinions have been written on the question; admittedly those opinions are not consistent with each other. The reasoning used has differed from time to time, and some opinions are without attempted reasoning, relying instead on past official opinions. The matter was considered in some historical detail by my predecessor in AGR 75-173.

At issue here are three statutory provisions. SDCL 7-9-7 provides in pertinent part:

No register of deeds may accept for record in his office:

1. Any deed or oil, gas or other mineral lease that does not include the post-office address of the grantee or lessee and a legal description of the property conveyed or leased; . . .

SDCL 43-21-1 provides:

When any owner of a government subdivision or a platted tract or lot which is within or without the corporate limits of any city or town shall divide the same into parcels for the

purpose of transfer that cannot be described except by metes and bounds, he shall cause the parcels of land so divided to be platted into lots and have the lots numbered and a plat thereof recorded before any instrument of transfer of such divided parcels of land shall be recorded. If such plat cannot be made without an actual survey he shall have such lands surveyed and the plat thereof recorded.

Finally, SDCL 43-30-16 provides:

Conveyances of railroad property to or by the South Dakota railroad authority, the state or any of its subdivisions, including the conveyance of railroad rights-of-way, or any portion thereof, which are described by individual or cumulative metes and bounds descriptions or which are described by points of beginning and termination, railroad mile-posts, railroad engineering survey station numbers and right-of-way and track maps, are exempt from the provisions of chapter 11-3 and chapter 43-21. However, copies of right-of-way or track maps describing conveyances of railroad property to or by the South Dakota railroad authority, the state or any of its subdivisions, including the conveyance of linear railroad rights-of-way, or any portion thereof, shall be furnished to the director of equalization in each county wherein such conveyances shall be filed of record.

I do not believe it is necessary to delve into the nuances of whether or when metes and bounds descriptions are entitled to recordations pursuant to SDCL 43-21-1. Suffice it to say that whatever SDCL 42-21-1 prohibits in terms of metes and bounds descriptions, that prohibition is of no effect here by virtue of the express language of SDCL 43-30-16.

SDCL 7-9-1 requires the register of deeds to 'keep full and true records in proper books, of all . . . instruments authorized by law to be recorded. . . .' In my opinion, the above described conveyances by the Railroad Authority are such instruments.

Furthermore, I find nothing in the language of SDCL 7-9-7, which requires a legal description of the property, necessitating a contrary conclusion. Assuming the description provided as an example is a 'metes and bounds' description, that does not mean it is not a 'legal description.' In fact, it appears to me that the description utilized in the quit claim deed is precisely the type of description authorized by the Legislature by way of SDCL 43-30-16. I have little difficulty in concluding that a legislatively authorized property description is a 'legal description.'

Accordingly, I am unable to accept the premise of the first question that there is no legal description. I am of the opinion that the description utilized is authorized by SDCL 43-30-16 and the Register of Deeds may not refuse to accept the deeds for recording because of that description.

IN RE QUESTION NO. 2:

In my opinion the second question is one aimed at the wisdom of creating the exemption found at SDCL 43-30-16 in the first place. That is a question for the Legislature. Metes and bounds descriptions (assuming of course the _descriptions at issue are properly characterized as metes and bounds) are not unknown to Register of Deeds. See, e.g. SDCL 43-21-4.1. I assume that some system has already been devised to handle those non-typical conveyances. Further, I assume the language in 43-30-16 providing for the filing of maps was intended to ease the burden caused by the exemption.

To the extent that such descriptions are erroneous, or known to conflict with existing conveyances, it may be that the ultimate solution is a quiet title action. I do not believe it is advisable to place the various Register of Deeds into a quasi-judicial decisionmaking position. As I pointed out in AGR 84-27, our state Supreme Court has held that even a void deed is entitled to be recorded. Bliss v. Tidrick, 172 N.W. 852 (S.D. 1910). Only those instruments that are facially devoid of legal authorization should be refused for filing. Title conflicts should be resolved by the affected property owners, not the Registers of Deeds.

IN RE QUESTION NO. 3:

SDCL 43-30-16 in essence provides that certain conveyances of railroad property do not have to be platted to be recorded. If such property has already been platted, and if that platted description accurately describes the property to be transferred, I can think of no good reason why such a _description should not be utilized in a conveyance of the property. However, I have discovered nothing that would require it. Therefore, my answer to your third question is yes.

Respectfully submitted,

Mark V. Meierhenry
Attorney General