

OFFICIAL OPINION NO. 86-30, Sale of railroad lines

July 23, 1986

Mr. James R. Myers
Director
Division of Railroads
Capitol Building
Pierre, South Dakota 57501

OFFICIAL OPINION NO. 86-30

Sale of railroad lines

Dear Mr. Myers:

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

FACTS:

As Director of the Division of Railroads, charged with assisting in the development of railroad transportation in the state, you have been asked to assist in the conveyance of a portion of Chicago and North Western Transportation Company's rail lines in South Dakota to the Dakota, Minnesota and Eastern Railroad. SDCL 49-16A-42 authorizes a railroad to sell all or any part of its lines to another railroad for operating purposes. SDCL 49-16A-43 requires that, prior to sale of its property, a railroad provide notice of the sale and time for counter offer to current lessees and abutting landowners.

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

QUESTION:

Does SDCL 49-16A-43 affect the sale of railroad property under SDCL 49-16A-42?

IN RE QUESTION:

It is clear that SDCL 49-16A-42 is intended to apply to sales by a railroad to a railroad for operating purposes, while SDCL 49-16A-43 applies to sales by a railroad to an entity other

than a railroad for nonoperating purposes. SDCL 49-16A-43 is intended to prevent a railroad which has ceased to use its property for railroad purposes from selling to a speculator when the current lessee or adjacent landowner is interested in the property.

Therefore, the answer to your question is no.

Respectfully submitted,

Mark V. Meierhenry

Attorney General