

OFFICIAL OPINION NO. 90-16, Removal of utility lines in right-of-way

April 26, 1990

Mr. Floyd E. Meidinger
McPherson County State's Attorney
P.O. Box 290
Leola, South Dakota 57456

OFFICIAL OPINION NO. 90-16

Removal of utility lines in right-of-way

Dear Mr. Meidinger:

You have requested an opinion of this office based on the following factual situation:

FACTS:

An electric utility has its poles and facilities located within county highway right-of-way and the county wishes to regrade and improve six miles of this road.

Based on the foregoing, you have asked the following question:

QUESTION:

Does the county have to bear the expense of removal of the poles and line or does the electric utility bear the expense?

SDCL 31-26-1 provides:

The board of county commissioners, upon written application designating the particular highway the use of which is desired, may grant to any person engaged in the manufacture or sale of electric light and power, or any municipality authorized by law to purchase electric current, or any person authorized by law to purchase such current from such municipality, or any person engaged in, or about to engage in, the furnishing telephone service, the right to erect and maintain poles and wires for the purpose of conducting electricity for lighting, heating, and power purposes, together with stay wires and braces, and for the purpose of furnishing telephone service, in and along any public highway in its county for a period not

to exceed twenty years, subject to the conditions set forth in this chapter and such further reasonable regulations as the Legislature may hereafter prescribe.

SDCL 31-26-1 sets forth authority for a county to authorize an electric utility to locate its poles and lines within county highway rights-of-way subject to conditions set forth in chapter 31-26.

SDCL 31-26-4 provides:

When any highway along which a line has been constructed pursuant to 31-26-1 shall be changed, the grantee shall, upon ninety days' notice in writing, remove such line to the highway as changed.

SDCL 31-26-4 requires an electric utility with facilities located upon county highway rights-of-way to relocate them to accommodate a new highway constructed by the county ninety days after notice to do so.

Under SDCL 31-26-9, if an electric utility fails to relocate when requested, it is guilty of a petty offense.

Based upon these statutes, it is my opinion that the electric utility is responsible for the cost of removal and relocation of poles and lines located within county highway rights-of-way on construction or reconstruction of the highway by the county.

Respectfully submitted,

ROGER A. TELLINGHUISEN
ATTORNEY GENERAL

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