

OFFICIAL OPINION NO. 90-25, Law enforcement jurisdiction over platted subdivision roads

June 26, 1990

Mr. Michael A. Jackley
Meade County State's Attorney
1425 Sherman Street
Sturgis, SD 57785

OFFICIAL OPINION NO. 90-25

Law enforcement jurisdiction over platted subdivision roads

Dear Mr. Jackley:

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

FACTS:

Meade County has certain roads or right-of-ways located within platted subdivisions. Such roads have been dedicated as "public right-of-ways" by the subdivision's homeowners association. The roads are maintained by a county road district formed under SDCL ch. 31-12A. They are policed by county law enforcement.

Law enforcement has made several arrests on these roads. One parent was charged with allowing his unauthorized son to drive upon any highway in violation of SDCL 32-12-72. The son was also arrested for operating a motorcycle without a helmet on the public streets or highways of this state in violation of SDCL 32-20-4.

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

1. Do such roads as described above fall within the meaning of "highway" for the purposes of SDCL 32-12-72?
2. Do such roads fall within the meaning of "public streets or highways of this state" for the purposes of SDCL 32-20-4?

IN RE QUESTION NO. 1:

Your first question involves a charge under SDCL ch. 32-12. For the specific purposes of that chapter, terms used therein are defined at SDCL 32-14-1. "Highway" is defined at SDCL 32-14-1(9) as:

[T]he entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public as a matter of right for purposes of vehicular travel;

The roads you describe fall squarely under this definition. They are publicly maintained in that the county road district is a governmental subdivision of the state and a public body, corporate and politic. SDCL 31-12A-12. Obviously, they are open to the use of the public as a matter of right for vehicular travel. As such, the answer to your first question is YES.

IN RE QUESTION NO. 2:

Unfortunately, I have been unable to find such a clearly applicable and concisely worded definition of "streets or highways" for the purposes of SDCL ch. 32-20. However, whenever the meaning of a word or phrase is defined in any statute, such definition is applicable to the same word or phrase wherever it occurs unless a contrary intention plainly appears. SDCL 2-14-4. I see no contrary intention here.

Moreover, there are many other definitions one could choose from and achieve the same result. For instance, SDCL 31-1-1 reads in pertinent part:

Every way or place of whatever nature open to the public, as a matter of right, for purposes of vehicular travel, is a highway.

Similarly, SDCL 31-13-32 sets forth in pertinent part:

For the purposes of 31-13-32 to 31-13-54, inclusive, 'street' shall mean any road, road right-of-way, road area, or street dedicated to the public or for the public use located entirely within platted land or a subdivision, and abutted on both sides along its entire length by the platted land or subdivision.

See also SDCL 11-6-1, 11-3-1.1 and 9-1-1. None of these definitions are conditioned upon who maintains the right-of-way. All of the definitions would render the roads you describe "public streets or highways." Again, no contrary intention even slightly appears.

The reason is sound public policy. It takes no legal sophistry to conclude that the intent of SDCL 32-20-4 is to protect minors who ride motorcycles on traffic-filled public right-of-ways. No matter how much they may dislike it, minors have been mandated by our Legislature to wear safety helmets. The need for such protection is present no matter who maintains the highway or where it is located. That need does not vanish simply because a county road district, as opposed to Meade County, maintains the right-of-way.

As is often the case with our profession, arguments can be made. I am fully aware that SDCL 32-20-4 used the particular phrase "highways of this state." I am also cognizant of SDCL 31-1-4, which says:

The highways of this state consist of streets and alleys within the limits of municipal corporations, the state trunk highway system, the county highway systems of the several counties, and all other highways denominated secondary highways. (Emphasis added.)

Obviously, that list did not include county road district roads. As such, I am aware of the argument that only those categories of highways listed under SDCL 31-1-4 are "highways of this state" as that phrase was used in SDCL 32-20-4. However, I believe such a statutory interpretation is unreasonably narrow.

The labels attached to the various highway systems are for the sole purpose of clarifying the duties and powers of governmental entities charged with their administration. SDCL 31-1-5. At the same time, the county road district itself is responsible for maintaining its roads. SDCL 31-12A-21(4). There is no need for labels. That is not to say, though, that there is no need to protect motorcycling minors on these roads. To do so would defy logic.

In my opinion, the roads you describe are "public streets or highways of this state" under any definition cited herein. As such, the answer to your second question is YES.

Respectfully submitted,

ROGER A. TELLINGHUISEN
ATTORNEY GENERAL

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