

OFFICIAL OPINION NO. 91-03, Procedure of Evaluating the Lease of a Portion of State-owned Railroad.

January 30, 1991

Mr. Richard L. Howard, Secretary
Department of Transportation
DOT Building
Pierre, SD 57501

OFFICIAL OPINION NO. 91-03

Procedure of evaluating the lease of a portion of state-owned railroad

Dear Secretary Howard:

You have requested guidance in the procedure the Division of Railroads and the South Dakota Railroad Board should use in evaluating the request of MRC (a regional railroad authority) to lease a portion of state owned railroads.

The 1989 Legislature passed House Concurrent Resolution 1001 relative to this line, resolving that the line should be investigated to determine if restoration is feasible, and if no restoration takes place within two years of Resolution 1001, two public hearings should be held, one in Pierre to discuss disposition of this line. If the testimony indicates no realistic potential or public benefit in restoring this line, then this line should go through statutory disposal procedures.

You have asked the following questions:

1. Should the Division of Railroads and the South Dakota Railroad Board consider the request of MRC to lease the Kadoka to Rapid City line pursuant to an administrative hearing under SDCL 1-26?
2. If the answer to #1 is "yes", are there any other procedures which should be followed?
3. If the answer to #1 is "no", which procedures should be followed?

For all intents and purposes, the two year period set forth in HCR 1001 has expired. Therefore, in response to the directive of the Legislature, a procedure should be conducted

by the Division of Railroads and the South Dakota Railroad Board to make final determination of the feasibility of developing the Kadoka to Rapid City segment of the state-owned railroad or to dispose of same if such development is not feasible.

To resolve the issue of the procedural aspect of this issue, your questions are answered as follows:

The Division of Railroads and the South Dakota Railroad Board should conduct an administrative hearing on the issue of the feasibility of leasing the Kadoka to Rapid City segment pursuant to SDCL 1-26.

2. The administrative hearing in question one should be held after the two hearings required by HCR 1001 have been conducted and adequate study of information on the feasibility of developing the Kadoka to Rapid City segment has been provided by such hearings.

3. Not applicable.

The Division of Railroads and the South Dakota Railroad Board should conduct two informal hearings, one of which must be held in Pierre, South Dakota, for the purpose of exploring the feasibility of leasing this railroad segment to MRC and the public investment that would be involved.

Upon completion of both hearings required by HCR 1001, and the information considered as to the feasibility of leasing this railroad segment, the formal administrative hearing pursuant to SDCL 1-26 should be conducted and a formal decision made on this matter, which pursuant to SDCL 1-26 would be reviewable by the courts. This procedure should resolve this controversial issue in a legal due process proceeding and give force and effect to HCR 1001 and SDCL 1-44-20.

Very truly yours,

MARK BARNETT
ATTORNEY GENERAL

MB:CQ:js