

November 14, 1991

Representative Mike Wagner
P.O. Box 308
Baltic, SD 57003--0308

OFFICIAL OPINION NO. 91-15

Railroad Property

Dear Representative Wagner:

You have requested an official opinion of this Office concerning the following factual situation:

FACTS:

Certain constituents in my legislative district have a vital interest regarding the future sale of state-owned railroad property and state-owned property adjacent to rail lines. Many of the constituents lease this property from the state and need to be guaranteed that a third party could not buy the land they are leasing and then force them out of business.

In researching this concern, the LRC staff directed me to SDCL 1-48-28. This section provides strong safeguards in line with my concerns and those of my constituents. I believe, however, that one phrase included in the section is unclear. I therefore request an opinion on the meaning of the following:

SDCL 1-44-28. The division of railroads shall manage all real and personal property acquired by the state for railroad purposes and shall secure all income available from those properties. The director of the division may negotiate, enter into, execute and issue leases, licenses, easements or other agreements as may be necessary to provide for the use of any property or facility not used directly in rail operations. Prior to any sale, except a sale for railroad purposes, of state-owned railroad property, the state shall provide the lessee of any railroad property affected by the sale and, if there is no lessee, the owner of any property abutting railroad property with written notice of the proposed sale. The state shall give the lessee or abutting owner sixty days from the notice to purchase the property at not less than its appraised value. No vacation, change, relocation or sale of state-owned railway property as provided in this chapter shall diminish any existing right of use enjoyed by any public utility, municipally-owned utility or cooperative utility which provides electricity, gas, water or telephone service. [Emphasis supplied.]

Based upon the above factual situation, you ask the following question:

QUESTION:

The exclusion to the notice requirement in the above- referenced statute is "a sale for railroad purposes." You would like a definition of what the term "railroad purposes" in the statute might mean.

IN RE QUESTION:

In examining SDCL 1-44-28, it is my opinion that the phrase that you emphasize, "except a sale for railroad purposes," anticipates a sale for the purpose of running a railroad on the right-of-way sold. Thus, if the line were abandoned and the prospective buyer sought to do something with the right-of-way other than run a railroad on it, the State would need to comply with the notification and property purchase requirements set forth in the statute.

In other words, the notice and opportunity requirements of the statute apply to protect lessees and abutting landowners, in all cases, except in that narrow circumstance where it can be shown in advance of the sale that the use after sale will still be to "run a railroad."

MWB:CME:ss