

LETTER OPINION
97-L-9

January 16, 1997

Mr. Ronald A. Reichert
Medora City Attorney
PO Box K
Dickinson, ND 58602-8305

Dear Mr. Reichert:

Thank you for your letter asking whether an untraveled section line in unplatted land annexed to a city is held in trust for public use and right-of-way and whether such a section line is subject to state laws regarding easements for travel.

All congressional section lines are public roads and are open for travel by the public within 33 feet on each side of the section line in all townships in this state "outside the limits of incorporated cities, and outside platted townsites, additions, or subdivisions. . . ." N.D.C.C. § 24-07-03. If a section line easement is within the limits of an incorporated city, it is not a public road. DeLair v. County of LaMoure, 326 N.W.2d 55, 58-60 (N.D. 1982). However, the North Dakota Supreme Court has consistently held that the state holds section line easements in trust from the United States government for the benefit of our citizens, and that the state has never surrendered this trust. See cases cited in 1996 N.D. Op. Att'y Gen. 89 (copy enclosed). See also Don Negaard, Note, The Public Trust Doctrine in North Dakota, 54 N.D.L. Rev. 565 (1978). Therefore, it is my opinion that a section line easement within the limits of an incorporated city retains its character as a section line easement, but is not open to travel unless opened through platting under N.D.C.C. ch. 40-50.1 or its predecessors, or through other laws providing for the opening of roads for travel. 1996 N.D. Op. Att'y Gen. 89.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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