LETTER OPINION
2009-L-01

January 5, 2009

Mr. Dennis Edward Johnson
McKenzie County State's Attorney
PO Box 1288
Watford City, ND 58854-1288

Dear Mr. Johnson:

Thank you for your letter asking about North Dakota's section line rights-of-way. For the reasons below, it is my opinion that: (1) while there is a relationship between the right-of-way and the 1866 federal statute granting access across public land, the right-of-way is not founded solely on nor governed solely by that federal statute; (2) the right-of-way is not conditioned on a practical-for-travel test; and (3) the right-of-way applies to just one side of a section line if on the other side the right-of-way never attached, has terminated, or is otherwise not in effect.

ANALYSIS

Section Line Right-of-Way - Origin

There are two primary sources for the public's right to travel section lines, a state statute and an 1866 federal statute. Their applicability depends on factual circumstances, including the ownership history of the underlying land. Depending on that history, the 1866 federal statute may provide a better source for the right-of-way, or the state statute may be the more applicable; and, it is possible that both could apply.

In 1866 Congress allowed roads on the public domain: "[T]he right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted."[1] This law was codified as Section 2477 in the 1873-74 Revised Statutes and is known as "R.S. 2477."[2] It was enacted when the government encouraged exploitation of

[1] Act of July 28, 1866, ch. 262, § 8, 14 Stat. 251, 253 (codified at 43 U.S.C. § 932), repealed by 90 Stat. 2743, 2793 (1976) (codified at 43 U.S.C. §§ 1701-1785).
[2] U.S. 1873-74 Rev. Stat. § 2477.

the public domain,[3] for which R.S. 2477 roads were "necessary aids."[4] The statute offered free rights-of-way across public land.[5] Although the law was repealed in 1976,[6] the repeal preserved existing R.S. 2477 rights.[7]

The R.S. 2477 offer could be accepted by states and territories.[8] The 1867-68 Dakota Territorial Legislature provided that areas used as a highway "for twenty years or more, shall be deemed public highways."[9] This accepted the R.S. 2477 grant.[10] The Territorial Legislature also enacted laws allowing local governments to formally establish roads.[11] This too likely accepted the grant.[12] And in 1871 it enacted a law stating: "All section lines shall be, and are hereby declared, public highways, as far as practicable."[13] This was another means by which the R.S. 2477 grant was accepted.[14]

Thus, this 1871 law governed section line access during territorial days. In 1889 when North Dakota entered the Union territorial statutes became state law,[15] and the section line right-of-way was included in the state's 1895 code.[16] In 1897 it was repealed,[17] and replaced with a law stating that "section lines shall be considered public roads . . . upon

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[3] Wilkenson v. DOI, 634 F. Supp. 1265, 1275 (D. Colo. 1986).
[4] Cent. Pac. Ry. v. Alameda County, 284 U.S. 463, 473 (1932).
[5] E.g., Lovelace v. Hightower, 168 P.2d 864, 866 (N.M. 1946); Streeter v. Stalnaker, 85 N.W. 47, 48 (Neb. 1901).
[6] Pub. L. 94-579, 90 Stat. 2743, 2793 (1976).
[7] 43 U.S.C. § 1769(a).
[8] E.g., DeLair v. County of LaMoure, 326 N.W.2d 55, 59 (N.D. 1982); Faxon v. Lallie Civil Tp., 163 N.W. 531, 533 (N.D. 1917).
[9] 1867-1868 Dak. Terr. Laws, ch. XIII, § 33 (codified at 1877 Dak. Terr. Rev. Code Ch. 29, § 37. This codified common law, by which public use could accept R.S. 2477. See, e.g., Hillsboro Nat'l Bank v. Ackerman, 189 N.W. 657, 659 (N.D. 1922); Shultz v. Dep't of Army, 96 F.3d 1222, 1223 (9th Cir. 1996); Lindsay Land & Livestock Co. v. Churnos, 285 P. 646, 648 (Utah 1929); State v. Nolan, 191 P. 150, 153 (Mont. 1920).
[10] Walcott Tp. v. Skauge, 71 N.W. 544, 546 (N.D. 1897).
[11] E.g., 1887 Dak. Terr. Compiled Laws §§ 1206-1219.
[12] See Hughes v. Veal, 114 P. 1081, 1082-83 (Kan. 1911).
[13] 1870-71 Dak. Terr. Laws, ch. 29, § 1 (codified at 1877 Dak. Terr. Rev. Code ch. 29, § 1.); see also id. at ch. 33, § 1 (codified at 1877 Dak. Terr. Rev. Code ch. 33, § 1) ("All section lines . . . are hereby declared, public highways, as far as practicable.").
[14] E.g., Bird Bear v. McLean County, 513 F.2d 190, 191 n.2 (8th Cir. 1975); Ames v. Rose Tp. Bd., 502 N.W.2d 845, 847 (N.D. 1993).
[15] See 1889 N.D. Const. Trans. Sched. § 2, reprinted in, 13A N.D.C.C 309 (1998).
[16] N.D. Revised Code of 1895, ch. 17, § 1050.
[17] 1897 N.D. Sess. Laws ch. 112, § 22 (repealing § 1050 of the 1895 Revised Code).

the order of the board of supervisors . . . ."[18] This did not include the "as far as practicable" clause, but it did require that local governments issue an "opening" order. This requirement was short-lived. In 1899 the statute was amended to state that section lines "shall be considered public roads . . . ."[19] This eliminated any need for government action to open section lines for public travel. While this state law has been amended a few times since 1899, its substance has remained unchanged. Presently it states: "[S]ection lines are considered public roads open for public travel to the width of thirty-three feet . . . on each side of the section lines."[20] On its face, this state statute provides the public with an unconditioned 66-foot easement, and the statute has been so interpreted. There is "no doubt that section lines are public roads;"[21] "'they are roads which every citizen has a right to use.'"[22] "'From . . . territorial days down to and including the present time section lines have been declared to be public highways.'"[23] Further, section lines "are open for public travel without the necessity of any prior [governmental] action . . . ."[24]

The right-of-way's statutory history shows that its lineage includes R.S. 2477.[25] Even so, the North Dakota Legislature supplied an independent source for the public's right to travel section lines by enacting a state section line law. The state statute not only implements R.S. 2477 but it also, as an expression of state sovereignty, establishes a right based on state law and independent of federal law.[26] Thus, the public's right to use section lines has a federal-law source and a separate state-law source.

This dual legal basis for the right-of-way has never been discussed by the North Dakota Supreme Court, and while it consistently declares section lines open to the public, it does not consistently articulate the rationale. It has not explicitly held that there is distinct federal and state authority for the right-of-way. Some of its decisions rely solely on

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[18] 1897 N.D. Sess. Laws ch. 112, § 3.
[19] 1899 N.D. Sess. Laws ch. 97, § 3.
[20] N.D.C.C. § 24-07-03.
[21] Hillsboro Nat'l Bank, 189 N.W. at 659; see also State v. Hafner, 499 N.W.2d 596, 597 (N.D. 1993) ("[A] section line is a road. . . ." (citing N.D.C.C. § 24-07-03)).
[22] Small v. Burleigh County, 225 N.W.2d 295, 299 (N.D. 1974) (quoting Lawrence v. Ewert, 114 N.W. 709, 710 (S.D. 1908)).
[23] Zueger v. Boehm, 164 N.W.2d 901, 905 (N.D. 1969) (quoting King v. Stark County, 266 N.W. 654, 656 (N.D. 1936)).
[24] Small, 225 N.W.2d at 297, 300.
[25] Bird Bear, 513 F.2d at 191, n.2 (N.D.C.C. § 24-07-03 is "derived from" the 1871 territorial law accepting the R.S. 2477 grant); Small, 225 N.W.2d at 301 (Johnson, J., dissenting) ("[S]ource for the section line right-of-way goes back . . . to 1866.").
[26] See Shultz, 96 F.3d at 1223 (ruling that Shultz did not prove a right-of-way across federal land, failing to establish either an R.S. 2477 right or one under Alaska law, and thereby indicating the possibility that a right-of-way could be a federal or state right).

R.S. 2477. In several of these the court appears to have relied on R.S. 2477 and not state law because they involved pre-statehood transactions that removed the subject land from the public domain, and if an R.S. 2477 right-of-way did not attach prior to those transactions the state may not have had authority in later-enacted state law to impose the right-of-way.[27] In these decisions, because R.S. 2477 seems the only plausible source for the right-of-way, it is understandable why the federal statute was relied on rather than N.D.C.C. § 24-07-03, the state statute. But such factual circumstances do not explain the Court's sole reliance on R.S. 2477 in two other decisions, and, consequently, they could imply that the right-of-way does not have a separate state-law source.[28] In other decisions, however, the Court cites or discusses both N.D.C.C. § 24-07-03 and R.S. 2477.[29] In these decisions the legal basis for the decision is unclear; R.S. 2477 may be cited merely as historical background. In yet other decisions the North Dakota Supreme Court relies solely on the state statute and does not mention R.S. 2477,[30] an indication that it recognizes a distinct state-law source for the right-of-way.

In sum, the primary sources for the public's right to travel section lines are R.S. 2477 and N.D.C.C. § 24-07-03. The state statute has an historical connection to R.S. 2477, and although the judiciary has not directly addressed the relationship between the state and federal laws, each is a distinct statutory source for the section line right-of-way. When section 24-07-03 is applied as a distinct state-law source it is not governed by R.S. 2477.

Section Line Right-of-Way - Practicality Test

You ask whether a practicality test conditions the right-of-way; that is, whether a section line's terrain must be conducive to travel. The question does not arise from R.S. 2477, which did not contain such a condition: "The right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted."[31] The question arises due to the manner in which the 1871 Territorial Legislature's accepted the grant. It did so stating: "All section lines shall be, and are hereby declared, public highways, *as far as*

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[27] Faxon, 163 N.W. 531 (land no longer public domain in 1874 when Indian reservation established); Wenberg v. Gibbs Tp., 153 N.W. 440 (N.D. 1915) (land no longer public domain in 1873 when railroad made selection under land grant); Cosgriff v. Tri-State Tel. & Tel. Co., 107 N.W. 525 (N.D. 1906) (land no longer public domain when patented in 1884).
[28] Small, 225 N.W.2d 295; Huffman v. Bd. of Sup'rs., 182 N.W. 459 (N.D. 1921).
[29] Ames, 502 N.W.2d 845; Lalim v. Williams County, 105 N.W.2d 339 (N.D. 1960); Hillsboro Nat'l Bank, 189 N.W. 657.
[30] Burleigh County Water Res. Dist. v. Burleigh County, 510 N.W.2d 624 (N.D. 1994); Hafner, 499 N.W.2d 596; DeLair, 326 N.W.2d 55; Wallentinson v. Williams County, 101 N.W.2d 571 (N.D. 1960).
[31] See note 1.

practicable."[32] But in 1897 the State Legislature removed the "as far as practicable" clause.[33] Its removal 110 years ago would seem to resolve any question about subjecting public travel to a practicality test. Nothing in the current statute imposes conditions.[34] By statute the right-of-way is unconditional.

"As far as practicable," however, does appear in some North Dakota Supreme Court decisions. In several it appears merely in reviewing the right-of-way's statutory history.[35] But in one the Court seems to give the "practicality" language substantive application. The decision was issued after the language had been deleted, but the Court, without mentioning the state statute then in effect, declared: "Inasmuch as it is undisputed that it is entirely practicable to use the section line for highway purposes, a public highway was unquestionably . . . established on such section line . . . ."[36] This alone is insufficient to establish a practical-for-travel test, and the Court's decisions, on the whole, do not apply the 1871 law's "as far as practicable" clause to limit the section line right-of-way.

If, in fact, the "as far as practicable" language were applicable, the Court would consistently recognize the condition, but it has not. Most of its decisions do not recognize a practicality test. In an early decision, for example, the Court stated that upon acceptance "the public at once became vested with an absolute right" to use section lines.[37] The Court regularly makes similar statements about the unconditional nature of the easement.[38] When it does refer to a condition it is commonly and merely to the possibility that a local government has affirmatively closed a section line.[39] The Court has also stated that to be open to public travel a section line does not need to "be an improved

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[32] See note 13 (emphasis added). In 1883 the Territorial Legislature enacted a similar statute but without the "as far as practicable" language. 1883 Dak. Terr. Laws ch. 112, ch. II, § 3 (codified at 1887 Dak. Terr. Compiled Laws § 1263).
[33] See note 18.
[34] N.D.C.C. § 24-07-03: "[T]he congressional section lines are considered public roads open for public travel to the width of thirty-three feet [10.06 meters] on each side of the section lines."
[35] Ames, 502 N.W.2d 845; Hillsboro Nat'l Bank, 189 N.W. 657.
[36] Huffman, 182 N.W. at 461 (N.D. 1921); see also id. at 460 ("[N]o question but that it is entirely practicable to construct a highway on the section line. . . .").
[37] Walcott Tp., 71 N.W. at 546.
[38] E.g., Burleigh County, 510 N.W.2d at 628 (section lines are public roads); Ames, 502 N.W.2d at 847 (same); State v. Silseth, 399 N.W.2d 868, 869 (N.D. 1987) (quoting Small, 225 N.W.2d at 300 ("[S]ection lines . . . are open for public travel. . . ."); King, 266 N.W. at 656 (From "territorial days down to and including the present time section lines have been declared to be public highways."); see also notes 21-24 and accompanying text.
[39] E.g., Burleigh County, 510 N.W.2d at 628; Silseth, 399 N.W.2d at 869.

road,"[40] and that there is "no duty" on government to improve "each section line."[41] And this office has stated that the right-of-way is "separate from the decision whether to improve a section line . . . ."[42]

Although the present state law is clear, a question may be raised whether the terms by which section line easements were initially accepted could be later altered. There is no authority for the proposition that the Territorial Legislature's initial acceptance of R.S. 2477—which included the "as far as practicable" clause—could not be altered. So long as the grant was extant—as it was until its 1976 repeal[43]—there is no reason why a state could not accept it in different ways and also adjust, from time to time, the terms under which an acceptance was originally made. After all, the grant was self-executing,[44] "open-ended,"[45] and "'a standing offer.'"[46] It was "an unequivocal grant" of highways "without any limitation as to the method for their establishment."[47] And, as explained, North Dakota accepted R.S. 2477 several ways: by declaring section lines public roads, by providing for an official road opening under local government order, and by recognizing that public roads can be established through public use.[48] The North Dakota Supreme Court's recognition that acceptance could occur in different ways shows that an initial acceptance did not define with finality the scope and nature of R.S. 2477 rights-of-way. Indeed, a state has "the authority . . . to govern its own acceptance of rights of way."[49]

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[40] DeLair, 326 N.W.2d at 60 (N.D. 1982). The Court has relied on Attorney General opinions concerning section lines. Small, 225 N.W.2d at 299-300.
[41] DeLair, 326 N.W.2d at 60.
[42] N.D.A.G. 96-F-21.
[43] Pub. L. 94-579, 90 Stat. 2743, 2793 (1976).
[44] Sierra Club v. Hodel, 848 F.2d 1068, 1078 (10th Cir. 1988), overruled on other grounds by Vill. of Los Ranchos De Albuquerque v. Marsh, 956 F.2d 970 (10th Cir. 1992) ("A right-of-way could be obtained without application to, or approval by, the federal government.").
[45] Id. at 1083.
[46] S. Utah Wilderness Alliance v. BLM, 425 F.3d 735, 741 (10th Cir. 2005) (quoting Lindsay Land, 285 P. at 648); see also Tholl, 70 P. at 882 (R.S. 2477 was "a standing proposal").
[47] Smith v. Mitchell, 58 P. 667, 668 (Wash. 1899). A federal court has cited this decision with approval. United States v. 9,947.71 Acres, 220 F.Supp. 328, 335 (D. Nev. 1963).
[48] See notes 9-14 and accompanying text; see also Hughes v. Veal, 114 P. 1081, 1082-83 (Kan. 1911) (R.S. 2477 can be accepted by acts of public authorities, by the public itself, or by concurrent action of both); Smith v. Mitchell, 58 P. at 668 (R.S. 2477 may be accepted by prescription, dedication, use, and by statutory proceedings).
[49] S. Utah Wilderness Alliance, 425 F.3d at 763 note 15.

The proposition that an R.S. 2477 acceptance could be altered and that additional acceptances could be made is supported by a decision involving a Utah road. Burr Trail was a dirt road over federal land that had become, by public use, an R.S. 2477 road, even though over the years the traveled path "varied by as much as several hundred feet from the current roadway" and periodic flooding required realignment in many places.[50] Thus, the road as originally established did not prohibit later changes to its location. If the public could alter the course of an R.S. 2477 road, a Legislature could modify its acceptance of an R.S. 2477 grant, at least so long as Congress left the grant on the table.[51] Indeed, after R.S. 2477's repeal on October 21, 1976, the county in the Burr Trail dispute had sought to widen its R.S. 2477 roads. It could not do so. The county's "maximum rights" were defined on October 21, 1976.[52] Implicitly, had the county acted before that date it could have adjusted the terms of its R.S. 2477 acceptance.

The 1871 Territorial law remained a part of South Dakota law until 1939.[53] Although some early South Dakota decisions examine section line terrain to determine practicality for travel,[54] after the "as far as practicable" clause was repealed in 1939 South Dakota decisions no longer apply a practicality test, and the court's descriptions of the right-of-way have become broad and unconditional.[55] Once the "as far as practicable" clause was repealed it had no lingering effect on the section line right-of-way.

In sum, the clause, repealed in 1897, applied to North Dakota section lines for only a short time. Thus, any practical-for-travel test was removed from the right-of-way's state-law

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[50] Sierra Club v. Hodel, 675 F.Supp. 594, 599-600 (D. Utah 1987), aff'd in part and rev'd in part on other grounds, 848 F.2d 1068 (10th Cir. 1988).

[51] See Matthew L. Squires, Note, Federal Regulation of R.S. 2477 Rights-of-Way, 63 N.Y.U. Ann. Surv. Am. L. 547, 558 (2008) ("[N]ew uses or improvements of an R.S. 2477 right-of-way could cumulate additional rights to the state . . . up to [its 1976 repeal]. . . .").

[52] Sierra, 848 F.2d at 1083.

[53] Pederson v. Canton Tp., 34 N.W.2d 172, 174 (S.D. 1948).

[54] Sample v. Harter, 156 N.W. 1016, 1018 (S.D. 1916); Lowe v. E. Sioux Falls Quarry Co., 126 N.W. 609, 610 (S.D. 1910); Wells v. Pennington County, 48 N.W. 305, 307 (S.D. 1891) see also Lawrence v. Ewert, 114 N.W. 709, 711 (S.D. 1908) ("[A]s far as practicable" merely means that a local government was not required to improve a section line to establish the right-of-way). The North Dakota Supreme Court has noted this interpretation. Koloen v. Pilot Mound Tp, 157 N.W. 672, 674 (N.D. 1916).

[55] E.g., Douville v. Christensen, 641 N.W.2d 651, 655 (S.D. 2002) ("[S]ection lines, by operation of law, are open to passage by the general public."); State v. Tracy, 539 N.W.2d 327, 329 (S.D. 1995) ("[E]very section line [is] a public highway . . . unless . . . vacated . . . by lawful action. . . ."); Dave Gustafson & Co. v. State, 169 N.W.2d 722, 724 (S.D. 1969) ("All" section lines are public highways).

source. In doing so, North Dakota also altered its acceptance of the R.S. 2477 grant, so there is not, under the right-of-way's federal-law source, a practical-for-travel test.

Section Line Right-of-Way – Requisite Width

The right-of-way's full 66-foot width—with 33 feet on each side of the section line[56]—may sometimes be unavailable. A section line may mark the boundary between counties. townships, and states, one of which may have closed the section line over which it has jurisdiction. The section line may contain obstructions, limiting passage. And, because of federal land title considerations, the right-of-way may not have attached on one side of the section line, so the question arises whether it attached on the non-federal side. Is the 66-foot width a prerequisite to the existence of any kind of right-of-way?

The issue has arisen in South Dakota, which has a similar right-of-way law.[57] A South Dakota township sought to construct a road along a north-south section line separating sections 28 and 29.[58] A landowner objected. He argued that the government had granted section 29 to a railroad long before R.S. 2477's enactment in 1866,[59] and so he argued that section 29 was not part of the public domain in 1871 when the Territorial Legislature accepted R.S. 2477 by declaring section lines "public highways." Therefore, the landowner asserted that the right-of-way did not attach on the section 29 side of the section line.[60] The court agreed.[61] Having won this point he then asserted that because the right-of-way was not perfected in section 29 it would not be a full 66-foot right-of-way, and, therefore, a right-of-way could not attach in section 28.[62] The court rejected this argument and held that section 28 was subject to public travel.[63] It stated that nothing indicates "that the Legislature intended that the public should not have the right to travel over a highway owned by it merely because such highway is of less width than the maximum width allowed . . . ."[64] And the South Dakota Attorney General considered whether the right-of-way could be less than 66 feet where the section line marked the North Dakota-South Dakota boundary. He concluded: "[T]he fact that one side of the

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[56] N.D.C.C. § 24-07-03; 1870-71 Dak. Terr. Laws, ch. 29, § 3 (codified at 1877 Dak. Terr. Rev. Code ch. 29, § 3).
[57] E.g., S.D.C.L. §§ 31-18-1 and 31-18-2.
[58] Sample v. Harter, 156 N.W. at 1017.
[59] Id. at 1018.
[60] Id.
[61] Id. at 1018-19.
[62] Id.
[63] Id.
[64] Id. at 1019.

section line lies in another state would not . . . prevent the public from claiming an easement in the 33 feet south of the boundary line."[65]

Although the North Dakota Supreme Court has not addressed this situation, our law is likely no different. For example, a county was not required to remove an obstruction because the public's easement does not entitle it to an object-free section line for its "complete length *and width*."[66] Fences can be built on section lines, though they are subject to removal if the public needs the full 66 feet.[67] When neighboring townships agreed to narrow the right-of-way between them, directing adjoining landowners to maintain at least a 35-foot-wide roadway and later reducing the minimum width to 16 feet, that did not terminate public access over the narrowed right-of-way.[68] Landowners may even plant crops within the 66-foot easement; the public may still travel over the section line and destroy the crops, though it must restrict travel to only what is needed.[69]

This office has issued opinions recognizing that the right-of-way does not depend upon availability of the full 66 feet. The fact that some narrowing occurs does not terminate public travel on what remains. This office has stated: "[T]he Supreme Court specifically rejected an argument requiring free and unrestricted access across the entire 66 feet of the easement . . . ."[70] Local governments may permit construction of a fence parallel to a section line provided the fence does not "effectively deprive" the public of its ability to travel the section line.[71] Similarly, wells and water lines on a section line right-of-way are not necessarily illegal; they require removal "only if and to the extent they effectively deprive the pubic of the ability to travel on the section line."[72]

These opinions are consistent with the state-law principle that when a public interest is at stake an interpretation that favors the public is preferred. "'A narrow construction should not be permitted to undermine the public policy sought to be served."[73] The public policy

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[65] Report of the [South Dakota] Attorney General for 1919-1920, at 265.
[66] Burleigh County, 510 N.W.2d at 628 (emphasis added).
[67] Roshau v. Meduna, 307 N.W.2d 835, 838 note 1 (N.D. 1981) (dicta).
[68] See State v. Brossart, 565 N.W.2d 752, 753 (N.D. 1997).
[69] N.D.C.C. § 24-12-02(4); see also Brossart, 565 N.W.2d at 758 ("Brossart did not violate NDCC 24-12-02 by simply plowing his section line. . . ."); N.D.A.G. 2000-F-02 (Landowner may cultivate section line but public may still use it and in doing so may have to trample crops).
[70] N.D.A.G. 2000-F-02 (citing Ames, 502 N.W.2d at 850).
[71] N.D.A.G. 96-L-239.
[72] N.D.A.G. 2002-F-01.
[73] State v. Burr, 598 N.W.2d 147 (N.D. 1999) (quoting 2B Sutherland Stat. Constr. § 56.01 (5th ed. 1992)); see also N.D.C.C. § 1-02-38(5). In enacting a statute, it is presumed that the "[p]ublic interest is favored over any private interest."

here is freedom to travel section lines, and access questions should be resolved favoring access to whatever portion of the section line is available.[74] A similar principle applies in federal law, that is, grants serving a national purpose—such as R.S. 2477—should be liberally construed in favor of their purposes.[75] Further, the section line right-of-way is a trust held for the public's benefit.[76] If the trust's beneficiary, the public, is unable to enjoy the trust's full benefit—the entire 66 feet—this should not result in depriving the beneficiary of the entire trust.

Sincerely,

Wayne Stenehjem
Attorney General

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This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.[77]

[74] See State v. Peters, 334 N.W.2d 217, 222 (S.D. 1983) (Section line statutes "consistently . . . construed liberally in favor of . . . public . . . access to . . . section lines.").
[75] United States v. Denver & Rio Grande Ry., 150 U.S. 1, 14 (1893); see also Missouri, Kansas, & Texas Ry. v. Kansas Pacific Ry., 97 U.S. 491, 497 (1878).
[76] E.g., Burleigh County, 510 N.W.2d at 627; Lalim, 105 N.W.2d at 344.
[77] See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).