N.D.A.G. Letter to Sperry (Jan. 9, 1986)

January 9, 1986

Mr. James E. Sperry
Superintendent
State Historical Society
North Dakota Heritage Center
Bismarck, North Dakota 58505

Dear Mr. Sperry:

Thank you for your letter of November 25, 1985, regarding the legal obligations of the State Historical Board concerning a deed which it received from Stutsman County conveying the 1883 Stutsman County Courthouse to the State Historical Board.

The State Historical Society, acting through the State Historical Board, placed the 1883 Stutsman County Courthouse on the State Historic Sites Registry pursuant to N.D.C.C. §55-10-02. The placing of the 1883 courthouse on the Registry and the authority to do so was affirmed by the North Dakota Supreme Court in the case of County of Stutsman v. State Historical Society, 371 N.W.2d 321 (N.D. 1985).

On November 25, 1985, the State Historical Board received a quitclaim deed from Stutsman County. The deed was dated and executed on November 15, 1985. The deed purports to transfer the interest of Stutsman County in the 1883 Courthouse to the State Historical Board of the State Historical Society. You have requested an opinion from this office regarding the legal consequences and ramifications of this action by Stutsman County.

The State Historical Board has the authority to acquire on behalf of the state of North Dakota, lands, materials, and easements for historical purposes by lease, purchase, or gift. N.D.C.C. § 55-01-02. Whenever any grant, devise, bequest, donation, or gift or assignment of real property is made to the State Historical Board, such board shall receive and accept the same, and the right entitled thereto, in the name of the state. N.D.C.C. § 55-01-04. These statutes do not mandate or require the State Historical Board to accept every devise or donation of property which it may receive. The statutes simply give the State Historical Board the authority to accept property in the name of the state of North Dakota.

The State Historical Board has several options concerning this quitclaim deed which purports to convey the 1883 Stutsman County Courthouse to the Board. The Board may accept the deed and record it pursuant to North Dakota law. However, in considering this option, the Board must be aware of a condition present in the deed. That condition states as follows:

Should the grantee fail, neglect, or refuse to undertake and complete the said restoration, whether undertaken by itself or its designee, within a period of 3 years, then that which is herein quit claimed to grantee shall terminate, be of no force and effect, and it shall be as if this quit claim deed had never been executed, Grantor or its assigns may reenter and repossess the property to hold and enjoy such property, and all right, title, and interest in and to the property and to the improvements thereon shall revert to and revest in grantor or its assign.

In the event that the Board should accept this deed, it must be prepared to restore the Stutsman County Courthouse within the next three years. This could entail a rather large commitment of resources and funding from the State Historical Society and the State Historical Board. In the event that this restoration effort is unsuccessful, according to the conditions of the quitclaim deed the county may reenter the property and repossess it.

Another option which the Board has is to refuse to accept the deed and return the deed to Stutsman County. A grant takes effect so as to vest the interest intended to be transferred only upon its delivery by the grantor and is presumed to have been delivered at its date. N.D.C.C. § 47-09-06. Effective delivery of a deed requires a correlative act of acceptance by the grantee, since property cannot be thrust on a person against his will even if done gratuitously. 6A Powell on Real Property, 81-95 (1984). Furthermore, acceptance on the part of the grantee is essential in order to complete the delivery of the deed, whether such delivery is actual or constructive, and to make the instrument operate as a conveyance of title. Should the grantee in a deed refuse to accept it, the instrument is not, in the contemplation of law, delivered even though the grantor has done all on his part that is required to consummate delivery -- and title does not pass by virtue thereof. Even a deed purely by way of gift and which imposes no obligations on the grantee other than those necessarily incident to ownership of the land requires acceptance to be operative because an estate cannot be thrust upon a person against his will. 23 Am. Jur.2d Deeds § 173 (1983).

It is my understanding that the Board will meet on February 6 and 7. It is my suggestion that both of these options should be discussed by the Board and a decision on whether or not to accept this deed should be made at that time.

Sincerely,

Nicholas J. Spaeth

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