

**OPINION
53-55**

June 18, 1953 (OPINION)

HIGHWAYS

RE: Reconveyance of Easements

During your recent visit to this office you stated that there exists a certain apprehension among your constituents regarding Senate Bill 194 passed at the last session of the legislature. You state that some of your constituents inquire whether or not a reconveyance is necessary from a political subdivision that has procured a right of way for highway purposes.

In studying this question we note first of all that section 32 1503 of the 1943 Revised Code deals with this subject and provides as follows:

"WHAT ESTATE SUBJECT TO BE TAKEN. The following is a classification of the estates and rights in lands subject to be taken for public use:

1. A fee simple, when taken for public buildings or grounds, or for permanent buildings, for reservoirs and dams and permanent flooding occasioned thereby, or for an outlet for a flow or a place for the deposit of debris or tailings of a mine;
2. An easement, when taken for any other use;
3. The right of entry upon and occupation of lands and the right to take therefrom such earth, gravel, stones, trees, and timber as may be necessary for public use".

During the 1953 Session Senators Dewing and Hagen introduced Senate Bill 194 attempting to establish legislative intent and to provide for the reconveyance of an estate unlawfully taken under eminent domain for highway purposes. In lines 17, 19 and 19 of that original bill provision was made for reconveyance by the state highway commissioner or the governing body of the political subdivision, as the case may be, to the owner from which such land was originally taken. The intent of the legislature is clearly indicated by the language in the act as finally passed and signed by the Governor, wherein the lines previously referred to were deleted and the following language was used, beginning with line 11.

"No transfer to the state of North Dakota or any of its political subdivisions of property for highway purposes shall be deemed to include any interest greater than an easement, and where any grater state shall have been so transferred, the same is hereby reconveyed to the owner from which such land was originally taken, or to the heirs, executors, administrators or assigns of such owner".

It is our opinion, therefore, particularly in view of section 32-1503, which specifically provides that no greater estate than an easement be taken in the first instance is that the effect of Senate Bill 194 is to cure any defects in proceedings or recordings or other error and to quiet title in the owner to the right of way with exception of the easement for public use. It is, therefore, not necessary that an owner record any instrument of reconveyance to perfect his title since Senate Bill 194 covers the subject as thoroughly as it does.

ELMO T. CHRISTIANSON

Attorney General