

LETTER OPINION
93-L-289

October 5, 1993

Mr. Cameron D. Sillers
Langdon City Attorney
324 8th Avenue
Langdon, ND 58249

Dear Mr. Sillers:

Thank you for your August 11, 1993, letter requesting my opinion as to the ownership of property located within a tee-intersection of a street that has been vacated pursuant to North Dakota Century Code ch. 40-39.

The vacated street was originally created by dedication to the public for street purposes as part of Mukomela's First Addition to the city of Langdon and designated as Cottonwood Street. Cottonwood Street runs in an east-west direction and intersects with Alberta Street (also known as 5th Street). Alberta Street runs north-south and creates a tee-intersection where it meets Cottonwood Street. The plat of Mukomela's First Addition shows lot 4 of block 3 located at the southwest corner of the intersection, and lot 5 of block 2 located at the southeast corner of the intersection. The lots will hereinafter be referred to as 4 and 5.

On September 13, 1972, an order vacating Cottonwood Street, from its intersection with Ella Street (also known as 11th Street) to its intersection with Arbor Street (also known as 8th Street), was filed with the Cavalier County Register of Deeds. The resolution vacated Cottonwood Street along the north lot line of lots 4 and 5. Significantly, the area encompassed by the intersection of Cottonwood Street and Alberta Street was not excluded from the description of the vacated way.

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When lots 4 and 5 were originally sold, the conveyance transferred the fee to the center of any abutting street, unless a contrary intent was shown. N.D.C.C. ? 47-10-10. Welch v. Monson, 79 N.W.2d 155 (N.D. 1956). Whether a contrary intent appears in the grant is a question of fact. The remainder of this opinion assumes the original grants were silent on this point.

With this assumption, the original conveyance to lots 4 and 5 included the fee to the center of Cottonwood Street where it abuts the north property line of those lots. It also included the fee to the center of Alberta Street where it adjoins the east side of lot 4 and the west side of lot 5. The street easement converged to create the intersection of Cottonwood Street and Alberta Street.

In North Dakota, the adjacent lot owner owns a fee in the half of the street which is contiguous to the owner's property. Murphy v. City of Bismarck, 109 N.W.2d 635 (N.D. 1961). Such ownership is further recognized by the fact that if a city imposes an additional servitude upon a street easement, it is required to compensate the abutting owner in accordance with state law. City of Fargo v. Fahrlander, 199 N.W.2d 30 (N.D. 1972). Also, the rights of the public to section line highways and to streets and easements are limited to the right to travel and the owner of the adjoining land owns the fee title to the center of the easement. Small v. Burleigh County, 225 N.W.2d 295 (N.D. 1975). Further, N.D.C.C. ? 47-01-16 contains a rebuttable presumption that an owner of land bounded by a street owns to the center of the street.

When the city filed the resolution vacating Cottonwood Street with the register of deeds, its practical effect was to vacate any public right of travel in that portion of Alberta Street which comprised the intersection with Cottonwood Street. Consequently, unless the original grants indicated an intent to not transfer the fee to the center of any abutting streets, the resolution conveyed to the abutting property owners all of the right, title, and interest of the municipality to the property vacated, which

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would include any portion of Alberta Street comprising part of the intersection with Cottonwood Street. N.D.C.C. ? 40-39-08.

Based on the above assumption, it is my opinion that, as a result of the vacation, the owner of lot 4 acquired ownership, not only of the easement for Cottonwood Street where it directly abuts lot 4, but also of that portion of the easement comprising the southwest quadrant of the intersection with Alberta Street. Because lot 4 adjoins both Cottonwood Street and Alberta Street, the owner of lot 4 acquired the right, title, and interest to the public way which has been vacated within the intersection of the two streets.

Under the same rationale, the owner of lot 5 would acquire ownership to the southeast quadrant of the intersection of Cottonwood Street and Alberta Street.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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