

## **N.D.A.G. Letter to Elkin (Sep. 24, 1986)**

September 24, 1986

Ms. Janet A. Elkin  
Secretary  
Public Service Commission  
State Capitol  
Bismarck, ND 58505

Dear Ms. Elkin:

Thank you for your letter of September 3, 1986, inquiring on behalf of the Public Service Commission whether a conditional sales agreement as proposed by Burlington Northern Railroad for the disposition of its Mott branch line complies with N.D.C.C. § 49-09-04.1. Your letter also inquires as to what must occur for compliance should the proposed conditional sales agreement not be in compliance with existing state law.

North Dakota law, as found at N.D.C.C. §49-09-04.1, authorizes the Public Service Commission and a railway corporation, which has expressed an intent or does indeed act to abandon any railway line in North Dakota, to enter into a "trust agreement" for the purpose of reorganization or reopening of the railway line in question. As part of the trust agreement, a deed of trust is executed whereby railway property pertaining to the abandoned railway line is transferred to the Public Service Commission as trustee. The deed of trust must provide for reversion of the deeded property back to the railway corporation if there has been no reorganization or reopening of the railway line at the end of the five years from the date of the delivery of the deed.

By use of the precise words within the statute, such as "trust agreement," "deed of trust," and "trustee," it is clear that the Legislature has intended a trust arrangement to exist in any attempt to utilize the authority provided for in N.D.C.C. § 49-09-04.1. In reviewing the proposal of Burlington Northern attached with your letter, the usual components of a trust arrangement are missing. There is no discussion as to a deed of trust, conveyance to the trustee of the property involved, specification of trust powers, or any other usual components of a trust arrangement. Instead, the documents appear to provide for an agreement between Knife River Coal Mining Company and Burlington Northern allowing Knife River to continue to possess an option to purchase the abandoned line in question for a period of time. Although the author of the letter seems to characterize the conditional sales agreement as a trust arrangement, the proposal does not appear to provide for conveyance of the property to the Public Service Commission as trustee pursuant to a deed of trust agreed to by the appropriate parties.

In summary, the proposed conditional sales agreement as outlined in the enclosed documents submitted by Burlington Northern does not appear to constitute a trust agreement in compliance with N.D.C.C. § 49-09-04.1. What is needed to cause this

proposal to be in compliance with this statute is a conveyance to the Public Service Commission as trustee by a deed of trust and a trust agreement specifying the powers of the trustee and providing the manner in which the trust shall be administered. As part of the deed of trust, a reversion of the property back to the railway corporation at the end of five years from the date of the delivery of the deed must be included. However, those specific proposals and requirements outlined in the Burlington Northern letter of June 2, 1986, can be fulfilled when included in a trust agreement and deed of trust as opposed to the conditional sales agreement.

Sincerely,

Nicholas J. Spaeth

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