

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 90-31

Date issued: December 14, 1990

Requested by: Richard J. Backes, Director
North Dakota Department of Transportation

- QUESTION PRESENTED -

Whether a city is required to vacate the streets comprising the intersection to construct a grade separation and eliminate traffic turning movements at the junction of two city streets.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that a city is not required to vacate the streets comprising the intersection when there is construction of a grade separation and elimination of traffic turning movements at the junction of two city streets.

- ANALYSIS -

The city of Bismarck and the North Dakota Department of Transportation (NDDOT) propose to reconstruct the intersection of Main Avenue and Washington Street. The proposal includes lowering the grade on Washington Street and constructing a structure to carry Main Avenue traffic over Washington Street. All other vehicle turning movements will be eliminated because the roadways will be separated at that point.

The vacation of a public street provides for the cessation of the public's right to use the street. N.D.C.C. ' 40-39-05. However, a street is not vacated when the construction involves "a public structure to be used as a roadway" and the construction occurs on the street right-of-way. Cummings v. City of Minot, 271 N.W. 421 (N.D. 1937).

The inability of the public to make turning movements after a grade separation has been completed is also not a discontinuance of the public use of the streets which require a vacation. Rather, the elimination of the turning movements constitutes an appropriate exercise of the city's police power to regulate traffic upon its streets. See Dacotah Hotel v. City of Grand Forks, 111 N.W.2d 513 (N.D. 1961) (city may regulate use of streets and obstructions therein). The exercise of that police power includes:

many things which are not compensable to an abutting property owner, such

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as re-routing or diverting traffic; constructing a traffic island; installing a median strip prohibiting or limiting crossovers from one lane to another; using traffic control devices; prescribing one-way traffic; placing restrictions on u-turns, left and right turns; restricting the weight, size, and speed of traffic on the street; or installing "no parking" signs.

Yegen v. City of Bismarck, 291 N.W.2d 422, 425 (N.D. 1980).

In this case the public use of the street right-of-way is to be continued for public use with a physical change in the layout of the two streets. It is therefore my opinion that the intersection of Main Avenue and Washington Street does not have to be vacated because of the construction of the proposed structure on Main Avenue. It is my further opinion that a city's action controlling the turning movements of traffic at a street intersection does not require the city to vacate such intersection.

To the extent that this opinion is in conflict with 1983 N.D. Op. Att'y Gen. 36, the latter opinion is deemed overruled.

- EFFECT -

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.

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Attorney General

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