

# **Bond Case Briefs**

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## **HIGHWAYS - SOUTH DAKOTA**

### **State, Department of Game, Fish and Parks v. Troy Township, Day County**

**Supreme Court of South Dakota - August 16, 2017 - N.W.2d - 2017 WL 3526387 - 2017 S.D. 50**

Department of Game, Fish, and Parks sought judicial review of decisions of township boards of supervisors vacating portions of several section-line highways.

The Circuit Court affirmed in part and reversed in part. Department appealed.

The Supreme Court of South Dakota held that:

- Court was barred by separation of powers doctrine from reviewing boards' decisions de novo;
- Statute governing vacation of highways provided townships with discretion to weigh competing public interests in determining whether to vacate portions of highways;
- One township's decision to vacate portions of several section-line highways was arbitrary;
- Townships did not violate due process rights of Department of Game, Fish, and Parks; and
- Any violations of statutory notice provisions by townships did not prejudice Department of Game, Fish, and Parks.

Townships boards of supervisors' vacation of portions of section-line highways was not "quasi-judicial," and therefore court was precluded by separation of powers doctrine from reviewing boards' decisions de novo, but rather was limited to determining whether boards acted unreasonably, arbitrarily, or manifestly abused their discretion. Question decided by the townships was whether the public interest would have been better served by vacating the highway segments, townships did not adjudicate existing rights of specific individuals, and decisions concerning whether to vacate highways were prospective.

Statute governing vacation of highways provided townships with discretion to weigh competing public interests and determine which was more important to particular community in determining whether to vacate a highway or portion of highway, and therefore did not preclude vacation that would have denied public access to a public resource.

Township's decision to vacate portions of several section-line highways was arbitrary. Statements made by chairman of township's board of supervisors strongly indicated that township's decision was based not on a determination that vacating the highway segments would have better served the public interest, but rather on a determination that doing so would have better prevented public access to a public resource.

Townships' vacation of portions of section-line highways were not quasi-judicial decisions, and therefore due process provisions of federal and state constitutions did not apply to administrative proceedings concerning vacation.

Any violations of statutory notice provisions by townships did not prejudice Department of Game,

Fish, and Parks in administrative proceedings concerning vacation of portions of section-line highways, where townships took no action on vacation petitions at special meetings for which notice was not published, and, although notices provided for subsequent meetings did not provide physical mailing addresses for places of meetings, they provided names of locations for which addresses were easily located in a phone book.