



CITY OF RAPID CITY

RAPID CITY, SOUTH DAKOTA 57701-2724

OFFICE OF THE CITY ATTORNEY

300 Sixth Street

Jason E. Green, City Attorney
City web: www.rcgov.org

Phone: 605-394-4140
Fax: 605-394-6633
e-mail: Jason.green@rcgov.org

MEMORANDUM

TO: Legal and Finance Committee

CC: Public Works Committee
Mayor Hanks
Jim Preston
Steve Allender
Marcia Elkins

FROM: Jason E. Green, City Attorney

DATE: July 1, 2009

RE: Request for Use of Public Right of Way by Uglies, Inc.
Items No. 15 and 16 – July 1, 2009 Legal and Finance Committee Agenda

Items No. 15 and 16 on the July 1, 2009 Legal and Finance Committee agenda are both requests from Uglies, Inc. d/b/a Sports Rock to be allowed to use the public right of way for street dances on various dates. I am writing this memo to reiterate an opinion I have previously given to the Council regarding the use of public right of way.

State law requires municipalities to hold public right of way in trust for use of the public at large and for uses consistent with a right of way easement.

When the plat or map shall have been made out...and recorded ...every donation or grant to the public...shall be deemed a sufficient conveyance to vest the fee simple title of all such parcel or parcels of land as are therein expressed...for the uses and purposes therein expressed and intended, and no other use and purpose whatever. The land intended to be used for the streets, alleys, ways, commons, or



EQUAL HOUSING
OPPORTUNITY

EQUAL OPPORTUNITY EMPLOYER

July 1, 2009

Page 2 of 2

other public uses shall be held in trust to and for the uses and purposes expressed or intended.

SDCL § 11-3-12 (emphasis added). This statute sets out the obligation of the municipality to hold public right of way easements in trust for the public at large and for uses consistent with a public right of way easement. The South Dakota Supreme Court has noted that this statute “appears to be intended to delineate the respective rights between the City and the public.” Holida v. Chicago and Northwestern Transportation Company, 398 N.W.2d 742 (S.D., 1986.) Black’s Law Dictionary defines public trust as “one constituted for the benefit either of the public at large or for some considerable portion of it answering a particular description.” In contrast, Black’s defines private trust as “one established or created for the benefit of a certain designated individual or individuals, or a known person or class of persons clearly identified or capable of identification by the terms of the instrument creating the trust, as distinguished from trusts for public institutions.” It is important to note that the Supreme Court has held that SDCL § 11-3-12 is intended to delineate the respective rights as between the city and the public, not the city and an individual. Thus, permissible uses of the public right of way include uses such as the placement of street signs, the placement of light poles, use by public utilities, public transportation facilities such as bus shelters and benches, and other similar uses that are for the benefit of the public at large rather than a limited number of individual persons.

Based upon these legal authorities, it is my opinion that it is impermissible to allow an exclusive use of public right of way by a private, for profit business. Therefore, I recommend denial of items 15 and 16 as I believe these event permits violate the obligation of the City Council to hold right of way easements in trust for the public and for no other use and purpose whatever.

Please feel free to contact me if you have any questions.

JEG/map