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Phil Jensen
State Senator
South Dakota Legislature
10215 Pioneer Ave.
Rapid City, S.D. 57702

OFFICIAL OPINION NO. 15-01

**RE: SDCL 13-3-48.1 Limitations on Science Standards adopted by
the State Board of Education**

Dear Senator Jensen;

The Attorney General has received a request for an official opinion from you which is supported by 35 state legislators.

Question:

Do the State Board of Education's currently proposed Science Standards, which incorporate a significant number of items and formatting from the "Next Generation Science Standards," violate SDCL 13-3-48.1 if adopted?¹

Answer:

No. I cannot conclude as a matter of law that the State Board of Education's adoption of the Proposed Science Standards under the facts set forth herein would violate SDCL 13-3-48.1.

¹ Your question has been revised to reflect the facts disclosed in your opinion request.

Facts:

SDCL 13-3-48 requires the Secretary of the Department of Education (“DOE”) to prepare and submit academic content standards for kindergarten through twelfth grade to the State Board of Education (“BOE”) for approval. According to the DOE’s published material,² academic content standards establish expectations “for what students should know and be able to do by the end of each grade.”

The DOE has prepared a proposed set of Science Standards. These Proposed Science Standards were, according to the DOE’s material, developed by a work group. The DOE’s Science Standards Work Group Overview³ states:

The work group goal is to evaluate the existing State of South Dakota Science Standards and to determine the next steps for revision. All work will be framed on the current vision for science education in South Dakota as indicated by existing State of South Dakota Science Standards. Any changes to the existing standards will reflect the most current research in science education to help ensure that the standards meet the needs of all South Dakota students.

This Overview lists the name, occupation, and employer of the persons involved in the Work Group. The persons in the Work Group appear to be South Dakota residents. A vast majority of the Work Group participants are teachers at various secondary and post-secondary schools throughout the State. The Work Group participants also include other South Dakota professionals.

The “Standards Revision Meeting Schedule”⁴ for Science Standards Revision Meetings indicates that four public hearings have been held by the BOE on the Proposed Science Standards (in Rapid City, Pierre (two hearings), and Sioux Falls), and that one more public hearing is scheduled in Aberdeen on May 18, 2015. The DOE apparently anticipates that the Proposed Science Standards will be ready for BOE final action in the summer of 2015.⁵

² <http://doe.sd.gov/contentstandards/>.

³ <http://doe.sd.gov/contentstandards/>; link under Science Standards section to “Workgroup Overview.”

⁴ <http://doe.sd.gov/contentstandards/meetingschedule.aspx>.

⁵ South Dakota Standards Revision and Adoption Timeline, adopted by the BOE on November 17, 2014.

The October 24, 2014, letter to legislators from Dr. Melody Schopp, Secretary of Education, which you attached and referenced in your opinion request, describes the Proposed Science Standards and their preparation as follows:

While the science standards now before the Board of Education incorporate standards from the multi-state consortium called the Next Generation Science Standards, or NGSS, they are not an exact replica. Rather, they are standards developed by a work group of South Dakota science teachers, higher education representatives and members of the business community – using the best resources available to them, including their own experience and expertise.

... The proposed science standards do contain a significant number of items and formatting directly from the [Next Generation Science Standards.] However, the [work group preparing the proposed standards] was diligent about vetting each standard to ensure its appropriateness and relevance for South Dakota students.

... [T]he work group completed a thorough review of each and every standard contained in the proposed science standards now before the Board of Education. To do this work, group members drew on their own expertise and experience in the field of science education. They studied resources representing the very latest research on how students best learn science. They examined science standards from states such as Massachusetts and South Carolina, the Framework for K-12 Science Education, and the Next Generation Science Standards. The group also studied South Dakota's current set of science standards.

From these resources, the work group developed a set of standards that these professionals believe provide a framework to engross South Dakota students in scientific discovery, prompt them to ask questions and define problems, plan and carry out investigations, and analyze and interpret data.

The "Next Generation Science Standards" are academic content standards for science (kindergarten through grade twelve). The Next Generation Science Standards were developed by a group of states in conjunction with the National Research Council, which is associated with the National Academy of Sciences; the National Science Teachers Association; the American Association for the Advancement of Science, a non-profit organization dedicated to advancing science around the world; and Achieve, a non-profit education reform

organization.⁶ South Dakota, through the Department of Education, participated with 26 other states as a “lead state partner” in development of the Next Generation Science Standards.⁷ The “lead state partners” developing these Standards committed to “give serious consideration to adopting the resulting [Next Generation Science Standards] as presented.”⁸

In re Question:

Opinions from the Office of the Attorney General are confined to questions of law relating to actual, not hypothetical, factual situations. Your opinion request presents a mixed question of law and fact. In order to opine on your legal question, I must accept as true the facts presented in your opinion request, the letter from Secretary Schopp attached to your opinion request, and the publicly available information on the DOE’s website regarding the development of the Proposed Science Standards. Further factual inquiry is beyond the scope of a legal opinion issued by the Office of the Attorney General.

SDCL 13-3-48.1 was adopted by the South Dakota Legislature in 2014. This statute states:

Prior to July 1, 2016, the Board of Education may not, pursuant to § 13-3-48, adopt any uniform content standards drafted by a multistate consortium which are intended for adoption in two or more states. However, this section does not apply to content standards whose adoption by the Board of Education was completed and finalized prior to July 1, 2014. However, nothing in this section prohibits the board from adopting standards drafted by South Dakota educators and professionals which reference uniform content standards, provided that the board has conducted at least four public hearings in regard to those standards.

SDCL 13-3-48.1.

The South Dakota Supreme Court has established certain rules to be followed in ascertaining the meaning of statutes. In general, a statute:

⁶ Next Generation Science Standards website at www.nextgenscience.org.

⁷ Next Generation Science Standards website at www.nextgenscience.org.

⁸ Next Generation Science Standards website at www.nextgenscience.org, description of “Lead State Partners.”

... must be construed according to its manifest intent as derived from the statute as a whole, as well as other enactments relating to the same subject. Words used by the legislature are presumed to convey their ordinary, popular meaning, unless the context or the legislature's apparent intention justifies a departure. Where conflicting statutes appear, ...reasonable construction [must be given] to both, and ...effect [must be given], if possible, to all provisions under consideration, construing them together to make them harmonious and workable. However, terms of a statute relating to a particular subject will prevail over general terms of another statute. Finally, we must assume that the legislature, in enacting a provision, had in mind previously enacted statutes relating to the same subject.

Meyerink v. Northwestern Public Service Company, 391 N.W.2d 180, 183-84 (S.D. 1986) (citations omitted). See also *Martinmass v. Englemann*, 2000 S.D. 85, ¶ 49, 612 N.W.2d 600, 611.

Statutory interpretation begins "with the plain language and structure of the statute." *State Department of Transportation v. Clark*, 2011 S.D. 20, ¶ 10, 798 N.W.2d 160, 164 (quoting *State v. Miranda*, 2009 S.D. 105, ¶ 24, 776 N.W.2d 77, 84). It is presumed that the Legislature "never intends to use surplusage in its enactments, so where possible the law must be construed to give effect to all its provisions." *Clark*, 2011 S.D. 20 at ¶ 10 (quoting *Wiersma v. Maple Leaf Farms*, 1996 S.D. 16, ¶ 5, 543 N.W.2d 787 (quoting *US West Communications v. Public Utilities Commission*, 505 N.W.2d 115, 123 (S.D. 1993))).

Words used in statutes "are to be understood in their ordinary sense." SDCL 2-14-1; *Graceland College Center for Professional Development and Lifelong Learning, Inc. v. South Dakota Department of Revenue*, 2002 S.D. 145, ¶ 8, 654 N.W.2d 779 (words used by Legislature are presumed to convey ordinary, popular meaning unless the context or the Legislature's apparent intention justifies departure from this rule); *Rowley v. South Dakota Board of Pardons & Paroles*, 2013 S.D. 6, ¶ 7, 826 N.W.2d 360 (words and phrases in a statute must be given their plain meaning and effect); *Wheeler v. Farmers Mutual Insurance Co. of Nebraska*, 2012 S.D. 83, ¶ 20, 824 N.W.2d 102 (words and phrases in a statute must be given their plain meaning and effect; if they have plain meaning and effect, courts should simply declare their meaning and not resort to a statutory construction). In ascertaining the ordinary, popular meaning of words used by the Legislature, dictionary definitions are helpful, although not necessarily controlling. *Matter of Estate of Gossman*, 1996 S.D. 124, ¶ 10, 555 N.W.2d 102; *Schlim v. Gau*, 80 S.D. 403, 125 N.W.2d 174 (1963).

Further, all parts of a statute and all words in a statute must be given effect. *Wheeler*, 2012 SD 83 at ¶ 21 (a statute should be construed so that effect is given to all its provisions, so that no part of it will be inoperative or superfluous, void or insignificant); *People ex. Rel. South Dakota Dept. of Social Services*, 2011 S.D. 26, ¶ 18, 799 N.W.2d 408. It is presumed “statutes mean what they say and that legislators have said what they meant.” *Sauder v. Parkview Care Center*, 2007 S.D. 103, ¶ 20, 740 N.W.2d 878 (quoting *Crescent Electric Supply Co. v. Nerison*, 89 S.D. 203, 210, 232 N.W.2d 76, 80 (1975)).

The first sentence of SDCL 13-3-48.1 prohibits the BOE from adopting any uniform content standards drafted by a multistate consortium which are intended for adoption in two or more states. The “Next Generation Science Standards” are, based on the facts cited above, a set of uniform content standards that would appear to be prohibited by the first sentence of SDCL 13-3-48.1.

However, the rules of statutory construction require that the other provisions in SDCL 13-3-48.1 also be given effect as well. The last sentence of SDCL 13-3-48.1 states: “However, nothing in this section prohibits the board from adopting standards drafted by South Dakota educators and professionals which reference uniform content standards, provided that the board has conducted at least four public hearings in regard to those standards.” Therefore, both sentence one and the last sentence of SDCL 13-3-48.1 must be read together in a manner that gives effect to both.

In doing so, we must first determine the ordinary popular meaning of several of the words used in the last sentence of SDCL 13-3-48.1.

The term “however,” the first word in the last sentence of the statute, is a conjunction and means “in whatever manner or way,” “to whatever degree or extent,” or “in spite of that.” *Merriam-Webster’s Collegiate Dictionary*, Tenth Edition, p. 563. The second⁹ and third sentences of SDCL 13-3-48.1 both start with “however.” Therefore both of these sentences refer back to sentence one and establish limitations on sentence one: “In spite of” the first sentence, or “in whatever degree or extent or manner or way that” sentence one is effectuated, the requirements of sentence three also apply. This construction gives the ordinary popular meaning and effect to the “however” in the third sentence.

The ordinary popular meaning of two other words used in the last sentence of SDCL 13-3-48.1 also informs the construction of the statute. The term “draft”

⁹ The second sentence refers to standards adopted previously by the BOE and is not relevant to this opinion request.

means, with reference to a writing, "a preliminary sketch, outline or version or plan of," "compose, prepare". *Merriam-Webster's Collegiate Dictionary*, Tenth Edition, p. 350. The term "reference" means "something that refers: as a: allusion, mention; b: something (as a sign or indication) that refers a reader or consulter to another source of information" or "c: consultation of sources of information". *Merriam-Webster's Collegiate Dictionary*, Tenth Edition, p. 982.

Applying these terms to SDCL 13-3-48.1, it is apparent that the prohibition which the Legislature placed on the adoption of uniform content standards in sentence one was limited and qualified by sentence three. Sentence three of SDCL 13-3-48.1 specifically authorizes the BOE to adopt a written set of standards prepared by South Dakota educators and professionals that is based upon reference to, and consultation of, uniform content standards from other sources.

Based on the facts described above, and in construing both the first and last sentences of SDCL 13-3-48.1 together in a manner that gives effect to each and does not make one or the other inoperative, I cannot legally conclude that the BOE's adoption of the Proposed Science Standards would violate SDCL 13-3-48.1. Certainly, the BOE cannot, under the first sentence of SDCL 13-3-48.1, merely adopt uniform content standards such as the "Next Generation Science Standards". However, the BOE may, provided it has conducted at least four public hearings concerning the proposed standards, adopt standards drafted by South Dakota educators and professionals which reference uniform content standards, as provided by the last sentence of SDCL 13-3-48.1.

Questions of fact as to whether the Proposed Science Standards are standards prepared by South Dakota educators and professionals that result from reference to uniform standards from other sources would need to be determined by a court. Further limitations on the adoption of Science Standards would need to be addressed by our Legislature.

Sincerely,



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Attorney General

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