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September 15, 2021

Milton Ustad
Chair, Union County Commission
209 East Main, Suite 200
Elk Point, SD 57025

OFFICIAL OPINION No. 21-02

Re: Potential Division of Jefferson Township in Union County

Dear Chairman Ustad,

In your capacity as Chair of the Union County Board of Commissioners you have requested an official opinion from the Attorney General's Office on the following questions:

QUESTIONS:

1. Whether, pursuant to SDCL 8-1-8(3), a petition to divide one township into two townships requires signatures from a majority of registered voters of 1) the proposed new township, or 2) from the original to-be-divided township?
2. Pursuant to SDCL 8-1-8(3), who should be considered a "resident" of a township for purposes of ascertaining a majority of the registered voters?

ANSWERS:

1. A petition to divide a township into two townships requires signatures only from a majority of residents living in the affected portion of the original to-be-divided township.

2. "Voting residency," for purposes of ascertaining a majority of the registered voters that reside in a township, is defined by the provisions of SDCL 12-1-4.

FACTS:

Jefferson Township is an organized civil township located within Union County, South Dakota. Residents of Jefferson Township have expressed their desire to divide the township to create a new township to be named Wynstone Township. In reviewing the potential division, the question has arisen whether, pursuant to SDCL 8-1-8(3), a petition to divide Jefferson Township must contain the signatures of a majority of registered voter residing in Jefferson Township, or whether the petition must contain only the signatures of a majority of those registered voters residing within the anticipated new Wynstone Township? Additionally, a question has been submitted with regards to the definition of a "resident" for purposes of reaching a majority of registered voters within a township.

IN RE QUESTION 1:

You have requested a statutory interpretation of the language contained within SDCL 8-1-8, which states:

Any township or fraction of a township may be reorganized, divided, or merged with another township or fraction of a township, subject to approval by the voters in the affected civil townships and the affected portions of unorganized congressional townships as provided in §§ 8-1-7 to 8-1-10, inclusive, if: ...

(3) A majority of the registered voters residing in the affected portions of the affected townships petition the board of county commissioners to propose that the townships or fractions of townships be reorganized, divided, or merged.

When interpreting statutes, "the language expressed in the statute is the paramount consideration." *Olson v. Butte County Commission*, 2019 S.D. 13, ¶ 5, 925 N.W.2d 463, 464 (quoting *Goetz v. State*, 2001 S.D. 138, ¶ 5, 636 N.W.2d 675, 681). The South Dakota Supreme Court has explained:

[W]e begin with the plain language and structure of the statute. When the language in a statute is clear, certain and unambiguous, there is no reason for construction, and the Court's only function is to declare the meaning of the statute as clearly expressed. When

we must, however, resort to statutory construction, the intent of the legislature is derived from the plain, ordinary and popular meaning of the statutory language.

In re Wintersteen Revocable Trust Agreement, 2018 S.D. 12, ¶ 12, 907 N.W.2d 785, 789 (internal citations omitted).

After review of the statutory language, I have determined that signatures for a petition to divide Jefferson Township must come from a majority of the registered voters residing only in those portions of Jefferson Township that will become Wynstone Township.

SDCL 8-1-8(3) requires signatures from “[a] majority of the registered voters residing in the *affected portions* of the affected townships[.]” (emphasis added). If the Legislature had intended that a petition to divide or reorganize a township must come from a majority of voters residing in the entire township it could have simply worded SDCL 8-1-8(3) to require signatures from a majority of the registered voters living in “the affected township.” “Affected portions,” as used in the statute, must be given meaning and effect. *In re Taliaferro*, 2014 S.D. 82, ¶ 6, 856 N.W.2d 805, 806-07. To interpret the statute to require a division petition to have a majority of signatures from residents of all of Jefferson Township would render the “affected portions” language of the statute as surplusage. I cannot reach such a conclusion – “[t]he Legislature does not intend to insert surplusage into its enactments”. *Steinberg v. South Dakota Dep’t of Military and Veterans Affairs*, 2000 S.D. 36, ¶ 12, 607 N.W.2d 596, 601 (citation omitted).

Undoubtedly, all of Jefferson Township will be affected by the proposed division. However, I conclude that use of “affected portions” in the statutory text, in conjunction with “affected township,” limits the petition requirement to those registered voters residing in the affected portions of Jefferson Township that will be divided into Wynstone Township.¹

¹ It should be noted that a different conclusion is reached when analyzing who may vote in a township reorganization election. SDCL 8-1-10 clearly states that “the proposed [township] reorganization, division, or merger shall be decided by the voters of the affected civil townships[.]” Here the Legislature references the affected civil township as a whole without limiting the identified class of voters to the “affected portions” of the affected townships. All qualified voters in Jefferson Township would be eligible, by operation of SDCL 8-1-10, to vote on the question of division of the township.

IN RE QUESTION 2:

As previously discussed, SDCL 8-1-8(3) requires “a majority of the registered voters residing in the affected portions of” Jefferson Township to sign a petition to divide the township. You have requested clarification of the definition of “residency” for purposes of ascertaining a majority of registered voters necessary to sign the proposed division petition.

The definition of residency, or voting residency, for purposes of a township division is not defined in SDCL ch. 8-1.

The Legislature has defined “voting residence” elsewhere in state law:

For the purposes of this title, the term, residence, means the place in which a person has fixed his or her habitation and to which the person, whenever absent, intends to return. A person who has left home and gone into another state or territory or county of this state for a temporary purpose only has not changed his or her residence. A person is considered to have gained a residence in any county or municipality of this state in which the person actually lives, if the person has no present intention of leaving. If a person moves to another state, or to any of the other territories, with the intention of making it his or her permanent home, the person thereby loses residence in this state.

SDCL 12-1-4.

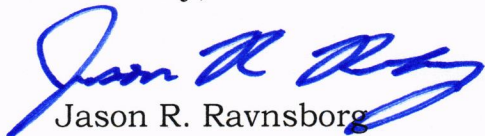
Our state Supreme Court has recognized that SDCL 12-4-1 establishes the criteria for determining voting residence in South Dakota. *Heinemeyer v. Heartland Consumers Power Dist.*, 2008 S.D. 110, ¶ 12, 757 N.W.2d 772, 776. The Court there recognized that “a voting residence is the place in which a person has fixed his or her habitation and whenever absent, intends to return.” *Id.* (cleaned up). The Court further explained that “a person gains voting residence in the place in which he or she actually lives and has no present intention of leaving.” *Id.* (cleaned up).

Based on an application of SDCL 12-4-1 to the requirements of SDCL 8-1-8(3), I conclude that only those persons actually living in the portion of Jefferson Township affected by the proposed division, and those individuals who may have temporarily left the affected portions of Jefferson Township – but who maintain a residence there and intend to return – may be considered for purposes of ascertaining a majority of registered voters necessary to sign a petition to divide Jefferson Township.

CONCLUSION

I conclude that signatures for a petition to divide Jefferson Township must come from a majority of the registered voters residing in those portions of Jefferson Township that will become Wynstone Township. Further, for purposes of determining those registered voters who reside in the affected portions of Jefferson Township, I conclude that all individuals who live in those portions of Jefferson Township should be included, as well as those individuals who may have temporarily absented themselves from Jefferson Township but who maintain a residence there with the intention to return.

Sincerely,



Jason R. Ravensborg
ATTORNEY GENERAL

JRR/SRB/PMP/dd