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December 30, 2024

Tracey L. Kelley
Custer County State's Attorney's Office
420 Mt. Rushmore Rd.
Custer, SD 57730

OFFICIAL OPINION 24-04

Re: Official Opinion Concerning the Formation of Overlapping Road Districts

Dear State's Attorney Kelley,

In your capacity as the State's Attorney for Custer County you have requested an official opinion from the Attorney General's Office on the following questions:

QUESTIONS:

- 1.) Does State law allow for the formation of a road district that includes within its boundaries real property already included within the boundaries of another road district?
- 2.) Does a Board of County Commissioners have the authority to deny formation of a proposed road district?

ANSWERS:

- 1.) No, State law does not allow for the formation of a road district that includes territory within its boundaries that is already included within the boundaries of another road district.
- 2.) No, the Board of County Commissioners has no discretion to deny the formation of a road district if the provisions of SDCL ch. 31-12A have been complied with.

FACTS:

Recently a petition was filed in Custer County to establish a road district that included within its proposed boundaries real property covered by a previously established road district. The Custer County Board of Commissioners denied the formation of the new road district.

IN RE QUESTION 1:

You have asked whether State law allows for the formation of overlapping road districts? No provision of SDCL ch. 31-12A directly addresses this question. The ambiguity of the chapter, in this regard, must be resolved through review of the “statute[s] as a whole, as well as enactments relating to the same subject.” *Jucht v. Schulz*, 2024 S.D. 46, ¶ 7, 11 N.W.3d 32, 35 (quoting *Matter of I.A.D.*, 2023 S.D. 36, ¶ 16, 993 N.W.2d 911, 916). The context of the statutes, as well their subject matter and the overall statutory scheme, can be determinative of legislative intent. *Argus Leader Media v. Hogstad*, 2017 S.D. 57, ¶¶ 8-10, 902 N.W.2d 778, 781-82 (context, including subject matter and purpose of statutory scheme, can be determinative of statutory interpretation); *In re Taliaferro*, 2014 S.D. 82, ¶ 6, 856 N.W.2d 805, 807 (enactments related to the same subject can be reviewed to determine statutory intent).

State law authorizes the formation of county road districts, in any area outside the boundary of a municipality, for the purposes of constructing and maintaining roads within the district. SDCL § 31-12A-1. A petition to establish a road district must “set forth” the need “for road work in the territory described in the petition[,] and [a] description of the territory proposed to be organized as a road district.” SDCL § 31-12A-3. Once established, each road district is considered a political subdivision of the State. SDCL § 31-12A-12. Each organized road district has the authority to construct and maintain roads within the district, as well as establish speed and weight limits (or other restrictions) on roads within the district’s jurisdiction. SDCL § 31-12A-21. Each road district also has the authority to levy taxes and issue special assessments to carry out the construction and maintenance of roads within the district. *Id.*

Based on a review of the above statutes, I find no legislative intent to allow the formation of overlapping road districts. The Legislature intends for road districts to be established in those geographic areas outside of municipalities where a need for road work exists. Once established, each organized road district becomes the political subdivision responsible for the construction and maintenance of roads within the geographic area of the district. That road district has the authority to levy taxes or issues special assessments to carry out any needed road work within the district. I find no evidence in these statutes, or any other statute in SDCL ch. 31-12A, of legislative intent to allow a second road district to be partially laid over the top of the first and have the same authority to construct roads, and levy taxes or assessments, within the same geographic territory as the original road district.

State law does allow for the consolidation of road districts – “two or more road districts may form a consolidated road district that comprises their combined area[.]” SDCL § 31-12A-29. Once established, a consolidated road district has the same powers granted by SDCL ch. 31-12A as any other road district. SDCL § 31-12A-31. You have not indicated that the proposed road district forming the basis of your inquiry was a consolidated road district. The statutes concerning consolidated road districts do not authorize overlapping road districts. See SDCL §§ 31-12A-29 through 31-12A-36. It is my opinion that the statutes concerning consolidated road districts authorize two or more road districts to merge with the geographic territory covered by the merged districts to then be managed by the consolidated road district. *Hogstad*, 2017 S.D. 57, ¶¶ 8-10.

Finally, to conclude that a second road district could be formed encompassing territory already covered by an existing road district also reaches an unreasonable or illogical result. By creating overlapping road districts, the bureaucratic burden on landowners in the overlapping districts is doubled. Also, property owners in the overlapping territory could be subject to taxes or assessments from each road district for the same services. Further, each road district may have competing ideas as to where roads should be constructed, or how roads should be maintained, in the overlapping territory. The doubling of the bureaucratic and tax burden on landowners in the overlapping districts, along with the potential for disputes between the overlapping districts, seems illogical and unreasonable. I cannot reach such a conclusion. *Ibrahim v. Dep’t of Pub. Safety*, 2021 S.D. 17, ¶ 13, 956 N.W.2d 799, 803 (statutes are construed so as not to arrive at an illogical conclusion); *Argus Leader v. Hagen*, 2007 S.D. 96, ¶ 15, 739 N.W.2d 475, 480 (“In construing a statute, we presume ‘that the legislature did not intend an absurd or unreasonable result’ from the application of the statute.” (quoting *State v. Wilson*, 2004 S.D. 33, ¶ 9, 678 N.W.2d 176, 180)).

Based upon the above analysis, I conclude that state law does not authorize the formation of a road district encompassing within its boundaries real property already included within the boundaries of another established road district.

IN RE QUESTION 2:

You have also asked whether a Board of County Commissioners has the authority to deny the formation of a proposed road district?

A petition to form a road district is required to be filed with the county and presented to its board of county commissioners for consideration. SDCL § 31-12A-3. After presentation of the petition, “[i]f the board of county commissioners is satisfied that the requirements of this chapter have been fully complied with, the board *shall* issue an order declaring that the territory *shall*, with the assent of the voters, ... be an incorporated road district by the name specified in the petition.” SDCL § 31-12A-6 (emphasis added).

When the language used in a statute is unambiguous there is no need for further statutory construction. *In re Wintersteen Revocable Trust Agreement*, 2018 S.D. 12, ¶ 12, 907 N.W.2d 785, 789. The plain language of SDCL § 31-12A-6 leads me to conclude that a board of county commissioners has no discretion to deny formation of a proposed road district if the requirements of SDCL ch. 31-12A have been complied with.

The use of “shall” in the statute indicates legislative intent to create a mandatory obligation on behalf of the county commission. *Heine Farms v. Yankton County ex rel. County Commissioners*, 2002 S.D. 88, ¶ 13, 649 N.W.2d 597 601. *See also Preserve French Creek, Inc. v. County of Custer*, 2024 S.D. 45, ¶ 18, 10 N.W.3d 233, 240 (The use of “shall” in SDCL § 7-18A-13 created a mandatory duty on county to enact a proposed ordinance and resolution and present it to a vote of the people.). The language of SDCL § 31-12A-6 confers no discretion on a board of county commissioners to deny the formation of a road district if the requirements of SDCL ch. 31-12A have been complied with.

The general requirements of SDCL ch. 31-12A, necessary for formation of a road district, include “an accurate survey and map of the territory ... of the road district, showing the boundaries ... of the district.” SDCL § 31-12A-2. A petition signed by no less than twenty-five percent of the landowners within the proposed district is required. SDCL 31-12A-3. The petition is required to contain the following information:

- 1) The proposed name of the road district;
- 2) That there is a need for road work in the territory described in the petition;
- 3) A description of the territory proposed to be organized as a road district;
- 4) A request that the board of county commissioners define the boundaries for the district, that a referendum be held within the territory so defined on the question of the creation of a road district in the territory; and that the board determine that such a district be created.

SDCL § 31-12A-3. Also required is a twenty-day opportunity for the public to examine the survey, map, and petition. SDCL § 31-12A-4. Finally, if any territory of the district is within the “subdivision jurisdiction of a municipality,” the municipality is required to approve the petition before it is presented to the county commission. SDCL § 31-12A-5. If these requirements have been met, it is my opinion that a county commission has the obligation to “issue an order declaring that the territory [proposed to be organized road district] shall, with the assent of the voters, ... be an incorporated road district by the name specified in the petition.”

CONCLUSION

I conclude that state law does not authorize the formation of a road district encompassing within its boundaries property already included within another established road district. There is no statutory authority nor evident legislative intent to allow the formation of overlapping road districts. Further allowing the formation of overlapping districts may reach an illogical or unreasonable result. I also conclude that a county commission has no discretion under SDCL § 31-12A-6 to deny formation of a road district if the requirements of SDCL ch. 31-12A have otherwise been met.

Sincerely,

A handwritten signature in black ink, appearing to read "Marty Jackley", with a stylized flourish at the end.

Marty J. Jackley
ATTORNEY GENERAL

MJJ/SRB/dd