



OFFICE OF ATTORNEY GENERAL

1302 East SD Highway 1889, Suite 1
Pierre, South Dakota 57501-8501
Phone (605) 773-3215
Fax (605) 773-4106
<http://atg.sd.gov>

MARTY J. JACKLEY
ATTORNEY GENERAL

BRENT K. KEMPEMA
CHIEF DEPUTY

December 3, 2025

Monae L. Johnson
Secretary of State
500 E. Capitol Ave.
Pierre, SD 57501

OFFICIAL OPINION 25-05

Re: Official Opinion Concerning 2025 HB 1130

Dear Secretary of State Johnson,

In your capacity as Secretary of State, you have requested an official opinion from the Attorney General's Office on the following questions:

QUESTION(S):

1. Regarding elections for counties, municipalities, and school districts, must the municipal, school district, primary, and general election contests be on the same ballot, or may they be on separate ballots?
2. What do the phrases "in conjunction with" and "a combined election" mean?

ANSWER(S):

1. No, the elections do not have to be on the same ballot.

2. In these statutes, “in conjunction with” is a temporal phrase referring to the timing of the election dates. In contrast, “a combined election” refers to the division of expenses.

FACTS:

In 2025, the South Dakota Legislature passed House Bill 1130, scheduled to become effective January 1, 2026. The bill revamped municipal and school board election laws by creating new statutes, repealing several others, and amending more still. In your role as Secretary of State, you are tasked with distributing any amendments to the general election laws under SDCL 1-8-1(8). You indicated your office has tried to interpret HB 1130 to no avail and you are thus unable to provide guidance to county auditors, municipal finance officers, and school business managers on upcoming elections. You seek guidance on how to advise local governments on the changes prompted by the enactment of HB 1130, and its corresponding statutes.

IN RE QUESTION 1:

You specifically inquire about the following portions of SDCL 9-13-37 and SDCL 13-7-10.3, effective January 1, 2026, which say, in relevant part:

Any other provision of this chapter notwithstanding, the governing body of a municipality shall, in even-numbered years, hold the general municipal election in conjunction with the regular June primary election or the regular November general election. The expenses and governmental responsibilities of a combined election must be shared in a manner agreed upon by the governing body of the municipality and the board of county commissioners involved.

SDCL 9-13-37.

Any other provision of this chapter notwithstanding, the board of a school district shall, in even-numbered years, hold the school board election in conjunction with the regular June primary election or the regular November general election. Expenses of a combined election must be shared in a manner agreed upon by the school board and the boards of county commissioners involved.

SDCL 13-7-10.3.

First, you question whether these statutes *require* municipal, school district, and county elections to be combined on one ballot.

When reviewing statutes, we must “assume statutes mean what they say and that legislators have said what they meant.” *Farm Bureau Life Ins. v. Dolly*, 2018 S.D. 28, ¶ 9, 910 N.W.2d 196, 199–200 (quoting *In re Petition of Famous Brands, Inc.*, 347 N.W.2d 882, 885 (S.D. 1984)). “When interpreting a statute, we begin with the plain language and structure of the statute.” *Magellan Pipeline Co. v. S.D. Dep’t of Revenue & Reg.*, 2013 S.D. 68, ¶ 9, 837 N.W.2d 402, 404. “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.” *Moss v. Guttormson*, 1996 S.D. 76, ¶ 10, 551 N.W.2d 14, 17 (citations omitted). The intent of a statute “must be determined from the statute as a whole, as well as enactments relating to the same subject.” *In re Taliaferro*, 2014 S.D. 82, ¶ 6, 856 N.W.2d 805, 807 (citations omitted). But “resorting to legislative history is justified only when legislation is ambiguous . . .” *Famous Brands, Inc.*, 347 N.W.2d at 885.

It is my opinion that these statutes do not state or otherwise require that the elections be on the same ballot. The statutes require only that the elections be held either on the first Tuesday after the first Monday in June or the first Tuesday after the first Monday in November. The mandate “shall” refers to *when* the elections are to be held, not in what manner. Nothing in the plain language of HB 1130 requires the elections be on the same ballot.

IN RE QUESTION 2:

Second, you asked the meaning of the phrases “in conjunction with” and “a combined election” within these statutes. It is my opinion that “in conjunction with” is temporal. It ties the municipal election or school board election with “the regular June primary election or the regular November general election.” As explained above, this phrase tells the reader *when* the elections must be held. They do not refer to combined or separate ballots.

On the other hand, it is my opinion that the phrase “a combined election” refers to expenses. This phrase tells the reader how expenses and governmental responsibilities must be shared. The subject sentences tie the “[e]xpenses” for school boards and “expenses and governmental responsibilities” for municipal elections to the mandate that the same be agreed upon by the governmental bodies sharing in that combined election. My interpretation of the statutes is that if the governmental bodies are unable to

agree, then the elections naturally must held separately from one another but on the same date.

While it is not necessary to consider the legislative intent behind an unambiguous statute, my interpretations align with the legislative intent of the bill. It is clear the legislative intent was to improve voter participation in municipal and school board elections by creating only two permissible dates for county, municipal, and school board elections—June and November—while eliminating the possibility of holding elections in April and May, which historically had much lower voter turnout. See House and Senate hearing testimony, available at <https://sdlegislature.gov/Session/Bill/25591> (last visited November 24, 2025). Proponents specifically testified that all these elections need *not* be combined on one ballot, but can be, if the entities so agree.

CONCLUSION

In my opinion and based on the plain reading of these statutes, municipal, school district, and county elections do not have to be on the same ballot even though they must be held on the same days in either June or November. In these statutes, “in conjunction with” is a temporal phrase referring to the timing of the election dates, while “a combined election” refers to the division of expenses. The legislature has the power to create and revise statutes and has the duty to further clarify the relevant statutes if necessary. As such, if further clarification is required, the legislature has the power and authority to do so.

Sincerely,



Marty J. Jackley
ATTORNEY GENERAL

MJJ/SLT/dd