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October 05, 2026

Dale M. Ruzicka, President
Saddleback Road District
24578 Saddleback Drive
Hermosa, SD 57744
Via email: dmr2460@yahoo.com

OFFICIAL OPINION 26-05

Re: Official Opinion Concerning the Construction, Modification, or Excavation of
Public Rights of Way within Road District Boundaries

Dear Mr. Ruzicka:

In your capacity as President of Saddleback Road District, you requested an official opinion from the Attorney General's Office on the following questions:

QUESTIONS:

1. What authority does the board of trustees of a road district have to establish ordinances or rules regulating construction, modification, or excavation by private parties within the public-road rights-of-way located inside the district's boundaries?
2. Does the board of trustees of a road district have the authority to require a mandatory permitting process in which private parties must obtain written approval from the district before conducting any construction, modification, or excavation of public-road rights-of-way within the district's roadway boundaries?

3. Does the board of trustees of a road district have the authority to do any of the following?
 - a. Charge a permit fee to the relevant private party for the construction, modification, or excavation of a district road?
 - b. Recover, from the relevant private party, the costs for professional services for the inspection of any construction, modification, or excavation performed on a district road?
 - c. Issue fines or penalties against private parties who perform unauthorized construction, modification, or excavation of a district road?
 - d. Enforce the collection of any fees, fines, or penalties?
4. Does any South Dakota government entity have the authority to retroactively inspect the construction, modification, or excavation on public-road rights-of-way within a road district's roadway boundaries for work done before an ordinance was adopted?

ANSWERS:

1. Multiple statutes in SDCL chapters 31-12A and 9-2 grant the board of trustees authority to establish ordinances regulating the construction, modification, or excavation of roads inside the district's boundaries.
2. Yes, the board can require a mandatory permitting process.
3. The board can charge a permit fee and issue special assessments, levies, and special maintenance fees. The board can also enforce the collection of the same through its power to sue or certify delinquent charges.
4. The board of trustees must inspect public roads within the district's boundaries.

FACTS:

Saddleback Road District is an incorporated road district in Custer County. Included in its boundaries is a residential subdivision. Custer County requires roads in subdivisions to be platted as public rights-of-way. While they are public rights-of-way, they are not county roads.

You are representing the board of trustees of the road district. According to your request for an official opinion, private parties within the Saddleback Road District performed excavation across a cul-de-sac on a district roadway. The parties excavated under the road to install a water line connecting two properties adjacent

to the roadway. The parties did not notify the district, the Custer County Highway Department, the Custer County commissioners, or the South Dakota Department of Transportation. Because there was no regulatory oversight before the excavation project began, the Road District has been unable to determine whether the excavation was performed properly or if there is a risk of future damage or degradation to the roadway.

RULES OF INTERPRETATION:

This opinion relies on the rules of statutory construction:

The purpose of statutory construction is to discover the true intention of the law which is to be ascertained primarily from the language expressed in the statute. The intent of a statute is determined from what the legislature said, rather than what the courts think it should have said, and the court must confine itself to the language used.

Words and phrases in a statute must be given their plain meaning and effect. 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.

Martinmaas v. Engelmann, 2000 S.D. 85, ¶ 49, 612 N.W.2d 600, 611 (quoting *Moss v. Guttormson*, 1996 S.D. 76, ¶ 10, 551 N.W.2d 14, 17).

IN RE QUESTION 1:

Under South Dakota law, a road district is expressly recognized as a “local authority,” defined as a county, municipality, township, road district, and any other local board or body having authority to adopt local police regulations under the Constitution and laws of this state. SDCL 32-14-1. This classification is significant because it establishes that road district governing bodies possess the same foundational regulatory authority as other local governmental bodies to adopt rules governing activities within their jurisdiction, including within public-road rights-of-way. Under SDCL 32-12A-22,

The board of trustees shall have the power to pass all necessary ordinances, resolutions, orders, rules, and regulations for the proper management and conduct of the business of said road district, and to carry into effect the ordinances, orders, resolutions, rules, and

regulations of said road district for the business for which such district is formed.

Under the same chapter, the legislature has stated the board of trustees may “[e]stablish speed and weight limits *and other restrictions on roads* under the road district’s jurisdiction[.]” SDCL 31-12A-21(6) (emphasis added).

More specifically, under SDCL 31-12A-25, the construction and maintenance of county-road-district roads is governed, in part, by SDCL 9-2-1. The latter statute says that the local authority has the power to “control as provided by law, both real and personal property and easements and rights of way within or without the corporate limits for all purposes authorized by law or necessary to the exercise of any power granted[.]” SDCL 9-2-1.

Notably, SDCL 31-12A-25.1 clarifies that any road constructed or maintained by a road district is a “public highway.” Under the South Dakota Constitution article VI, § 13, the fee title to land taken for highways remains in the underlying landowners, subject to public use. That said, the road district retains supervisory and management authority over the road right-of-way.

These statutes give the road district the authority to establish ordinances or rules to regulate public-road rights-of-way located inside the district’s boundaries.

IN RE QUESTION 2:

Next, you ask whether the road district has the authority to require a mandatory permitting process in which private parties must obtain written approval from the district before conducting any construction, modification, or excavation on or below the district’s roads. As I stated above, the board of trustees has broad statutory power to pass all necessary ordinances and regulations for the proper management of district roads. Thus, the district can require permits and approval before a private party can construct, modify, or excavate on a public road within the district.

South Dakota courts have recognized that governing bodies with supervisory authority over public highways possess the authority to require consent before private parties may conduct activities affecting those roads and their rights-of-way. *See McLaen v. White Twp.*, 2022 S.D. 26, ¶ 45, 974 N.W.2d 714, 728 (holding that because no standards for a local authority’s road repair and maintenance exist in state laws, repairing and maintaining roads is vested in the discretion of the board as long as the matters are within its authority to regulate).

IN RE QUESTION 3:

You further inquire about the powers of the road district regarding the costs and enforcement of its ordinances. Specifically, you ask whether the board of trustees of a road district has the authority to assess fees, costs, and fines in relation to the actions above, and how it can enforce the collection of the same.

State statute specifies the powers held by the board of trustees of a road district. Relevant to your inquiry, the board of trustees may levy taxes and special assessments. SDCL 31-12A-21.

A levy is a general tax imposed on *all* property within a taxing jurisdiction without any reference to special benefits granted the individuals taxed. *Ruel v. Rapid City*, 84 S.D. 79, 84, 167 N.W.2d 541, 544 (1969). Under South Dakota law, taxes are levied for public purposes and must be uniform on all property of the same class within the jurisdiction of the body levying them. S.D. Const. art. 11, § 2.

A special assessment, on the other hand, is money raised or levied for some local municipal purpose to which the funds so collected are to be specifically applied in making local improvements. *Ruel*, 84 S.D. at 84, 167 N.W.2d at 544. The assessment is not laid upon a whole community but only on a small and defined part thereof. *Id.* Special assessments may be levied only against property that receives a special benefit because of a local improvement, and “[t]he assessment is determined by the cost of the improvement, which is apportioned according to the value of the benefit conferred on the property.” *City of Brookings v. Associated Devs., Inc.*, 280 N.W.2d 97, 99 (S.D. 1979).

State statute defines the laws applicable to making special assessments. Under SDCL 31-12A-25, all proceedings for making special assessments are governed by SDCL chapter 9-43. For purposes of that chapter, a “local improvement” is any “building, altering, repairing, improving, or demolishing” of any “improvement of any kind to real property[.]” SDCL 9-43-75. Chapter 9-43 also says the local government may “make assessments for local improvements on property adjoining or benefiting from the improvements, collect the assessments in the manner provided by law, and fix, determine, and collect penalties for nonpayment of any special assessments.” SDCL 9-43-76.

Of particular note, the board may also levy special maintenance fees. “The governing body[,] prior to the assessment of real property,” may also “levy, annually, for the purpose of maintaining or repairing public improvements, a special maintenance fee upon the lots fronting and abutting any improvements”

within the local government. SDCL 9-43-138. "The governing body[,] prior to the assessment of real property may, by resolution, designate the lot or portion of lots against which the fee is to be levied and the amount of the fee to be assessed against each lot or portions of lots for such purposes, or may apportion the fee" *Id.* "The governing body may directly bill the affected property owner for the fee ..., or the governing body may require the county treasurer to add the fee assessed to the general assessment against the property" *Id.*

Thus, the board has the power to impose special assessments and levies as set out in SDCL 31-12A-21, and the board may also levy special maintenance fees as set forth in SDCL 9-43-138, a governing statute under SDCL 31-12A-25.

IN RE QUESTION 3a:

You ask whether the board of trustees can charge a permit fee to the relevant private party or parties to perform construction, modification, or excavation on public-road rights-of-way within the district's roadway boundaries.

Road districts retain supervisory and management authority over rights-of-way within the district. SDCL 31-12A-22. The general corporate- and regulatory-powers framework applicable to local governmental bodies in South Dakota supports the imposition of permit fees as part of a regulatory scheme.

Local governments typically possess authority under their police powers to require permits and impose fees related to permits, particularly for activities impacting public streets or roads. *City of Rapid City v. Rensch*, 77 S.D. 242, 247, 90 N.W.2d 380, 383 (1958). Indeed, beyond express grants of authority, local governments "are allowed to exercise those powers implied from, or incidental to, the effectuation of their express authority." *State v. Fifteen Impounded Cats*, 2010 S.D. 50, ¶ 17, 785 N.W.2d 272, 279. Ordinances requiring excavation permits are generally upheld as reasonable exercises of police power designed to protect public health, safety, and welfare. *Grant Cnty. Concerned Citizens v. Grant Cnty. Bd. of Adjustment*, 2015 S.D. 54, ¶ 17, 866 N.W.2d 149, 156. That said, the permit conditions and fees must bear a proportional relationship to the costs of regulation or enforcement, as excessive fees can be invalidated. *City of Winner v. Lineback*, 86 S.D. 165, 171, 192 N.W.2d 705, 709 (1971).

In my opinion, the board can charge a permit fee to the relevant private party or parties when they seek to perform construction, modification, or excavation on public-road rights-of-way within the district's roadway boundaries. This is consistent with the district's responsibility to protect the structural integrity of

roads within its jurisdiction, a core function for which the district is formed under SDCL 31-12A-22.

IN RE QUESTION 3b:

Next, you ask whether the board may recover, from the relevant private party, the costs for professional services for the inspection of any construction, modification, or excavation performed on a district road. Aside from the general power to levy taxes, special assessments, or special maintenance fees as discussed above, I cannot find an explicit statutory authority for road districts to recoup inspection costs specifically for private parties' construction, modification, or excavation on public roads. The board does have the power to sue the relevant parties for any violations of law or ordinance under SDCL 31-12A-21(2).

IN RE QUESTION 3c:

You also ask whether a road district governing authority may retroactively issue and collect fines or penalties against private parties who perform unauthorized construction, modification, or excavation of a district road. The imposition of retroactive fines and penalties would likely be unconstitutional under the U.S. Constitution article I, §10, and S.D. Constitution article VI, § 12. *See City of Rapid City v. Schaub*, 2020 S.D. 50, ¶ 8, 948 N.W.2d 870, 873. Again, aside from the power to levy taxes, special assessments, or special maintenance fees as discussed above, there is no explicit statutory authority allowing the board to fine or penalize private parties for a violation of an ordinance before an ordinance is established.

IN RE QUESTION 3d:

The question that naturally follows your inquiries above is how the collection of any fees, fines, or penalties can be enforced.

The board has the power to "carry into effect the ordinances, orders, resolutions, rules, and regulations of said road district for the business for which such district is formed." SDCL 31-12A-22. In other words, the board of trustees has the authority to enforce the road district's rules.

If any road district member fails to pay "any charges ... for road district service rendered or made available to any land within and part of the district," the board may certify those amounts to the county auditor. SDCL 31-12A-23.

Also under SDCL 31-12A-23, the board may certify to the county auditor any delinquent charges, interest, and penalties on any charges assessed or levied. Thus, the board may notify the auditor of any fees, fines, or penalties unpaid by landowners within the district, and those costs will be levied against the respective property.

In addition, SDCL 31-12A-21(2) allows the board to sue in the name of the district.

IN RE QUESTION 4:

Finally, you ask whether any government entity has the authority to retroactively inspect the construction, modification, or excavation on public-road rights-of-way within a road district's roadway boundaries for work done before an ordinance was adopted.

The county is not responsible for doing so. The county commissioners and county superintendent are only responsible for roads within the county *not* included in any municipality, organized civil township, improvement district, or county road district. SDCL 31-12-26.

Law enforcement has the authority to enforce any vehicle or traffic regulations on road district roads but not to inspect excavation under roads within an established road district. SDCL 31-12A-25.1.

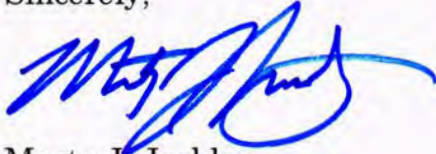
State law is clear that the government entity responsible for the maintenance of roadways within a road district belongs to the board of trustees. SDCL 31-12A-21. Not only does the board have the authority to inspect its roads, it has the responsibility to do so. If any maintenance or repair is necessary after inspection, the board has the remedies available as discussed under question (3), above.

CONCLUSION

South Dakota law grants road districts broad authority to regulate, manage, and protect public-road rights-of-way within their boundaries. The Saddleback Road District may adopt ordinances requiring permits, impose reasonable permit fees, and enforce compliance through certification of unpaid charges or civil actions. While the board may sue and also levy taxes, special assessments, and special maintenance fees, it lacks the authority to retroactively fine private parties or recover inspection costs outside those mechanisms. The board also retains both the responsibility and authority to inspect district roads, as no other governmental entity holds that power within district boundaries. Taken together, these statutes

provide a framework for the district to safeguard its roads and prevent unauthorized excavation or construction moving forward. The legislature has the authority to create or modify statutes as it deems necessary.

Sincerely,

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

Marty J. Jackley
ATTORNEY GENERAL

MJJ/SLT/dd