

OFFICIAL OPINION NO. 70-14, Levy and assessment of taxes for snow removal and special emergencies as authorized by SDCL 34-5 can be made in unorganized counties

STATE OF SOUTH DAKOTA  
OFFICE OF  
THE ATTORNEY GENERAL

March 24, 1970

John Powell  
State Civil Defense  
Pierre, South Dakota 57501

OFFICIAL OPINION NO. 70-14

**Levy and assessment of taxes for snow removal and special emergencies as authorized by SDCL 34-5 can be made in unorganized counties**

Dear Mr. Powell:

You have requested my opinion in answer to these questions:

- (1) Can a snow removal and special emergency reserve fund be created for the several unorganized counties in this state?
- (2) If Question No. 1 is answered yes, should the procedures for establishment for such funds be as provided for organized counties as provided in SDCL 1967, Ch. 34-5?
- (3) Who would establish such snow removal and special emergency reserve fund-the Highway Board of such unorganized county, or the County Commissioners of the organized county to which such unorganized county is attached?

Under the powers granted in SDCL 1967, 7-17-3, the County Commissioners of any organized county to which any unorganized county is attached shall have all of the jurisdiction, rights, powers, duties, and liabilities for the administration of the affairs of the unorganized county or counties which may be attached to said organized county as they may have in the organized county, excepting in cases where it is otherwise expressly provided by law. There can be no doubt that the phrase, ". . . all of the jurisdiction, rights, powers, duties, and liabilities for the administration of the affairs of the unorganized county or counties . . ." vests with the County Commissioners of the organized county, the

responsibilities to meet any emergency requirements for the public health and safety in time of disaster and emergency for the citizens of the unorganized county as well as the citizens of their organized county. The intent of the Legislature was that the County Commissioners of the organized county to which the unorganized county was attached would be vested with the usual and normal responsibilities toward the residents of the unorganized county in the same manner that they would have if they were acting as County Commissioners for the unorganized county, if instead, it were organized. There are, of course, exceptions which are expressly provided by law but the responsibility for public health and safety of the residents of the unorganized county is not expressly excepted and we can therefore conclude that the County Commissioners are as responsible for the public health and safety of the members of the unorganized county as they are for their own organized county residents.

Under SDCL 1967, 34-5, the State Legislature saw fit to specifically authorize the County Commissioners of the several counties of this state to establish a County Snow Removal and Special Emergency Reserve Fund by the levy of a tax which shall be in addition to all other county tax levies. There is no written expression that the intent of the words "several counties of this state" should exclude the unorganized counties and therefore, under the express authorities set forth in 7-17-3 the County Commissioners of the organized counties must act for and on behalf of the residents of the unorganized counties in accordance with the provisions of 34-5.

The avowed purpose of this chapter (34-5) is stated in 34-5-1 which is as follows:

"The intent of this chapter is for the accumulation and continuation of a sufficient fund for the use of the respective counties in this state so as to permit in any year the efficient and immediate snow removal on county roads, for repair of damages thereon caused by melting snow, the purchase of equipment for such snow removal and repair therefor, to meet emergency requirements for the public health and safety in time of disaster and emergency and to repay emergency aid grants the State Emergency Fund."

Therefore, Question No. 1 can be answered in the AFFIRMATIVE.

Inasmuch as the responsibility of the County Commissioners to meet the emergency requirements for the public health, safety and welfare of all of the people under its jurisdiction is one of their prime responsibilities and, by virtue of the authority vested in them in accordance with 7-17-2 which is the procedure set forth whereby the voters of the

unorganized county have by the duly held election of the voters of the unorganized county indicated their intent and desire to be attached to the organized county, the procedures of establishing a Snow Removal and Special Emergency Reserve Fund, levying a tax therefor and expending moneys from such fund as enumerated in 34-5 must be followed by the County Commissioners.

Inasmuch as the Highway Board of the unorganized county is not specifically vested with the power to meet emergency requirements for the public health and safety in the time of disaster and emergency, but instead have powers and duties enumerated in 31-11-16namely,

"A highway board when acting in and for an unorganized county shall have all the powers and charged with all the duties in regard to the construction, repair, and improvement of highways and bridges, which are conferred and imposed upon the county commissioners of unorganized counties. The laws of this state relating to the construction, repair, and improvement of highway and bridges, including the provisions with reference to state and federal aid therein, in organized counties shall be applicable to unorganized counties,"

such snow removal and special emergency reserve fund must be created by the Board of County Commissioners of the several counties as provided in 34-5-2.

Therefore, your three questions will be answered as follows:

Question NO.1 can be answered in the AFFIRMATIVE.

Question No.2 is answered in the AFFIRMATIVE.

Question No.3, the County Commissioners of the organized counties to which the unorganized county has been attached shall establish the snow removal and special emergency fund.

Respectfully submitted,

Gordon Mydland  
Attorney General