

OFFICIAL OPINION NO. 71-53, Power and duties of the county auditor in the registration of voters.

STATE OF SOUTH DAKOTA
OFFICE OF
THE ATTORNEY GENERAL

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Mr. Jack T. Klauck
State's Attorney, Pennington County
Rapid City, South Dakota 57701

OFFICIAL OPINION NO. 71-53

Power and duties of the county auditor in the registration of voters.

Dear Mr. Klauck:

You have requested my opinion on the following questions:

1. Does the county auditor have authority to appoint deputies who will work outside the office to register people to vote?
2. Does the county auditor have the legal right to send employed clerks or deputies out of the office to register voters?
3. Do the various auditors over the state have the legal right to register citizens of other counties who happen to be there in school or for other temporary reasons and then forward the card to the proper auditor?
4. How flexible can the law SDCL 12-4-7 pertaining to absentee registration be interpreted for administration? Does physically unable mean confined in a wheelchair or bed or does it mean confined to an occupation?

ANSWER 1. My predecessors have ruled in 1959-60 AGR 2, 1963-64 AGR 234 and 1963-64 AGR 341 that the county auditor does not have the authority to specifically appoint deputies who will work outside the office to register people to vote. I concur in this proposition; however, these opinions need clarification in order to fully answer this question.

SDCL 12-4-2 provides:

The county auditor shall have complete charge of the registration of all voters in his county, and the auditor of each city, the clerk of each township and the clerk of each town in his county are hereby constituted his deputies for the purpose of assisting in such registration. In the case of independent school districts having territory in two or more counties, the county auditor of each such county shall have charge of those electors of such district residing in his county. No additional compensation shall be paid to the county auditor, city auditor, township clerk or town clerk for such services.

SDCL 12-4-3 further defines the county auditor's powers and duties in the area of voter registration:

The county auditor shall provide such prescribed forms, blanks, and other supplies as are necessary to carry out the provisions of this chapter. Subject to the provisions hereof, he shall prescribe such reasonable rules and regulations as to the hours which his office shall be open and as to the places and the manner of registration as may be necessary; provided, however, that on each of the six business days immediately preceding the close of registration for each general and primary election, the office of the county auditor in all counties having a population of ten thousand or more shall remain open from 8:00 a.m. to 9:00 p.m., and, in any other county, the board of county commissioners may order such office to remain open from 8 :00 a.m. to 9:00 p.m. on any or all of said six business days immediately pre-ceding the close of registration for each general or primary election, if such board deems it in the best interest of the residents of said county to do so.

These two statutes grant the county auditor broad powers to register voters according to rules and regulations prescribed by him relating to the hours, places and manner of registration as may be necessary.

A deputy county auditor may do all acts that the auditor may do pursuant to SDCL 7-7-22. Deputies for the county auditor have to be authorized by the county commissioners who will set the number of the deputies, their time of employment and fix their compensation. SDCL 7-7-20.

It is my opinion that if a county auditor feels that a deputy or deputies are needed to register voters outside the office of the county auditor the following provisions should be generally followed.

1. The auditor should prescribe the hours and the places the deputies would register the voters outside the office.
2. Authorization from the county commissioners would be needed to hire the additional deputy or deputies and their compensation and hours of employment would be established. The county commissioners could make mileage allowances pursuant to SDCL 7-7-24.
3. Registration outside the office of the county auditor would have to cease pursuant to 124-5.1 twenty days before the election.

I can find no provision of the South Dakota Compiled Laws that would forbid registration by the auditor's office outside either the county seat or the county auditor's office. The county auditor would also be allowed some flexibility on this point to make the process of registration easier or to vary the provisions according to the local conditions.

The county auditor may use the present deputies employed at his office to perform these functions provided that the county commissioners authorized a change in working hours. However, SDCL 12-4-2 provides that no additional compensation may be paid, and this would apply to compensation over and above the salaries already authorized to be paid to the deputies. Authorization for a mileage allowance would have to be obtained from the county commissioners in order to be paid.

The hours of registration would not be important. SDCL 7-7-2 provides the minimal hours that the auditor's office must be open, and the other statutes relating to hours of registration set a minimum. Additional hours may be added either by the county commissioners for the office as in SDCL 12-4-3 or for outside the office as set by the county auditor also in SDCL 12-4-3.

ANSWER 2. It is my opinion that the county auditor has the legal right to send regularly employed deputies out of the office to register voters provided that the requirements spelled out in Question 1 are met.

ANSWER 3. It is my opinion that the various auditors do not have the legal right to register citizens of other counties. If a voter appears and states that he is unable to appear before the county auditor in the county where he wishes to vote, the county auditor may have him fill out the registration application provided by 12-4-7 and forward it to the auditor of the proper county.

ANSWER 4. The terminology used in SDCL 12-4-7 is "physically unable to appear" and should be interpreted quite broadly. Since the card provided by the statute does not require an oath, any valid reason stated would be sufficient to cause the county auditor to forward the materials needed for registration.

Respectfully submitted,

Gordon Mydland
Attorney General