

OFFICIAL OPINION NO. 72-16, Ordinance powers of Sanitary Districts

STATE OF SOUTH DAKOTA
OFFICE OF
THE ATTORNEY GENERAL

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John L. Foley
State's Attorney, Codington County
Watertown, South Dakota 57201

OFFICIAL OPINION NO. 72-16

Ordinance powers of Sanitary Districts

Dear Mr. Foley:

You have requested an official opinion based upon the following factual situation:

Lake Kampeska Sanitary District in Codington County is contemplating the enactment of an ordinance which would require landowners to install water flushed toilets and connect them to a private sewage treatment system if a public sewer is not available.

QUESTION 1:

Is SDCL 34-17 broad enough in scope to authorize such an ordinance?

SDCL 34-17-28 provides as follows:

Requiring connections with sewers-Assessments and charges.

The board of trustees shall have the power to require by ordinance or resolution that all dwellings or structures within the district, or within a defined area, shall be connected with the sewers of the district and provided with minimum sanitary facilities, immediately or within a specified period after the completion of sewers to which such connection may reasonably be made, under such regulations as are established by the resolution or ordinance, when it finds and determines that such action is necessary for the maintenance of public health and sanitary conditions in the district; to cause any such connection to be

made, and assess the cost thereof upon the land where the dwelling or structure is situated, or by agreement with the owner or occupant to accept payment therefor in cash or in installments payable with other sewer rates and charges over such period as may be agreed; and to impose and collect charges for the availability of sewer service to any properties so directed to be connected, whether or not such connection is made.

It is well settled that governmental subdivisions have only such powers as are given to them by statute or are necessary to, fairly implied in, incident to, or essential to the powers conferred by statute or essential to the declared purpose of the statute. SDCL 34-17-25 gives the district ordinance making power, but does not disclose the limits of that power. It does seem clear that SDCL 34-17 is intended to grant the districts the power to construct and maintain sewers within their districts; however, the statute is not a model of clarity.

It is my opinion that SDCL 34-17-28 provided the limitation upon the ordinance making powers of the district inasmuch as the statute contemplates granting the power to the district to compel persons living within the district to be connected with the sewers **of the district**. It is my opinion that this phrase means those sewers over which the district has control or some proprietary interest. This interest could be through lease, purchase, or some other manner, but the district would have to exercise control.

It is my opinion that the district could not require a person to be connected to a private sewer system without the district exercising some form of control over the private sewer system.

QUESTION 2:

In what manner should sanitary district ordinances be passed?

It is my opinion that SDCL 9-19 "Ordinances and Resolutions" should be followed as much as possible as the source of law to which the district may look to determine the proper way to enact an ordinance. This statute is the general ordinance statute under the municipal government chapter, and since the statute granting the district is silent on this subject, it is my opinion that the Legislature intended that the district look to the municipalities to determine the proper manner to pass ordinances.

QUESTION 3:

Are ordinances and resolutions of sanitary districts subject to a referendum?

It is my opinion that the initiative and referendum provisions of South Dakota law do not apply to the district. Article III, Section 1 of the South Dakota Constitution grants the right to initiative and referendum to the people living within municipalities.

SDCL 9-1-1 (1) defines municipality:

... "(M)unicipality," all cities and towns organized under the laws of this state but shall not include any other political subdivisions;

By definition of the statute, a sewer district does fall into the classification of a municipality, and the initiative and referendum do not operate as to an ordinance passed by the district.

Respectfully submitted,

Gordon Mydland
Attorney General