

OFFICIAL OPINION NO. 72-59, Board of Regents: Expenditure of public funds for education outside the State of South Dakota, and in institutions not under Board of Regents control, SDCL 13-49-20.

STATE OF SOUTH DAKOTA  
OFFICE OF  
THE ATTORNEY GENERAL

November 6, 1972

Francis B. Nickerson  
Associate Commissioner  
of Higher Education  
Pierre, South Dakota 57501

OFFICIAL OPINION NO. 72-59

**Board of Regents: Expenditure of public funds for education outside the State of South Dakota, and in institutions not under Board of Regents control, SDCL 13-49-20.**

Dear Mr. Nickerson:

You have requested my official opinion in answer to the following questions:

In view of the provisions of SDCL 13-49-20, does the Board of Regents have authority, without additional legislation, to enter into contracts with the appropriate authorities, to:

1. Furnish education in schools of veterinary medicine, without the State of South Dakota, a course of study not presently offered in the State of South Dakota by an institution of higher learning?
2. Furnish education for handicapped resident students, when no institution of higher learning in South Dakota offers a course of study for the particular handicapped involved?
3. Would the answer to question 2 be different if the particular course of study for a particular handicapped involved were furnished by a private educational institution in South Dakota, but not by the institutions under the control of the Board of Regents?

4. Would the answer to question 2 be different if an institution under the control of the Board of Regents were offering courses in a particular field of study, but such institutions are not equipped for, or capable of offering such course of study to handicapped resident students?

SDCL 13-49-20 was originally enacted by Chapter 87 of the Session Laws of 1961, under the following title:

An Act Entitled, An Act relating to the authority of the State Board of Regents to enter into agreements with other states to assist resident students of South Dakota to complete formal educations.

The body of such Act has not been changed, and provides:

The State board of regents is authorized to enter into agreements or contracts with states, individually or on a regional basis, to provide means by which student residents in South Dakota may be assisted to carry on or complete fields of study which are not offered by any institutions under the control of the board. This grant of authority shall not be construed as providing scholarship assistance in contravention to Sec. 13-55-1.

SDCL 13-49-20 contains very broad language, some of the confusion or doubt as to its application must arise from the fact that the Legislature subsequently embarked upon enacting various statutes for the furnishing of higher education to specific professions. Therefore, SDCL 13-56A provides for Health Professions Scholarship Loan; SDCL 13-50A deals with Medical and Allied Health Education, and SDCL 13-49-20.1 deals with the out-of-state education of dentists.

However, it is my opinion that these later enactment-s do not diminish the authority of the Board of Regents to act under SDCL 13-49-20. I have reached this conclusion as it is familiar law in this state, perhaps first enunciated in *Rosenburg v. Foss*, 4 S.D. 184, 56 N.W. 114, that in construing statutes, effect must be given so that each of such statutes exists. Judge Brown tersely summed up this rule in *Knudson v. Powers*, 56 S.D. 613, 230 N.W. 282, in this language:

Where two statutes apparently conflict, it is the duty of the court to give effect to both, insofar as it can be done ....

In *Simons v. Kidd*, 73 S.D. 280, 41 N.W. 2d 840, our court held that when statutes deal with the same subject matter, the court must presume that they stem from one policy, and are intended to be consistent and harmonious.

Applying these rules of statutory construction to the problem you have presented, I must find that the special specific statutes do not repeal or abrogate the general statute, SDCL 13-49-20, except insofar as the specific types of educational advantage stated within such special statutes are concerned. From a pure legal standpoint, as South Dakota has no public school of higher learning offering a course in veterinary medicine is concerned, SDCL 13-49-20 points out that the Board of Regents has authority to enter into agreements or contracts for such education at public colleges without South Dakota.

However, it must be remembered that without funding by an appropriation enacted by the Legislature, the Board of Regents has no money to finance such a project.

The question concerning furnishing courses for handicapped students presents a different and more perplexing problem. Being handicapped, irrespective of the nature of the handicap, deals with a status resulting from some physical disability. It is my opinion that SDCL 13-49-20 is concerned with a "specific" course of instruction, such as veterinary science. It was not designated to be used to furnish higher education at the expense of South Dakota residents because of any form of physical disability or status a college student possesses.

In view of this discussion, the answers to your questions are as follows:

QUESTION 1. The answer is, YES. This is a strictly legal answer.

QUESTION 2. The answer is, NO.

Because Question 2 is answered No, Questions 3 and 4 are rendered speculative and need not be answered.

Respectfully submitted,

Gordon Mydland  
Attorney General