

OFFICIAL OPINION NO. 73-31, County may not purchase radar station.

STATE OF SOUTH DAKOTA  
OFFICE OF  
THE ATTORNEY GENERAL

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Thomas M. Issenhuth  
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Madison, South Dakota 57042

OFFICIAL OPINION NO. 73-31

**County may not purchase radar station.**

Dear Mr. Issenhuth:

You have asked for an opinion on the following factual situation:

A, a local corporation which owns property throughout the Lake County area, has proposed that the County of Lake, the City of Madison, and a local radio station join together to construct a weather radar station system. The radar system as proposed would be purchased with joint funds of these four entities, and manned and operated at the expense of A. The system would be for the purpose of safeguarding lives and property within the Lake County area, and would also assist A in its operation by providing early warning of potential weather damage, as well as the location of damage in the event it occurs.

In connection with this factual situation, you have asked the following questions:

1. Is it legally permissible for Lake County to expend public funds in a joint private-public venture to purchase weather radar?
2. If not, is it legally permissible for Lake County to join or enter a venture to purchase a weather radar system through the weather modification commission contracting with a private corporation?

The answer to your first question is, NO.

It is well settled law in South Dakota that counties are vested with only such powers as are expressly conferred by statutes, or which may be reasonably implied from the powers expressly granted. See *South Dakota Employers Protective Association v. Poage*, 55 S.D. 198, 272 N.W. 806 (1937) and *State ex rel. Jacobsen v. Hansen*, 75 S.D. 476, 68 N.W. 2d 840 (1955). Therefore, unless statutory authority can be found, the county could not enter into such a contract.

I can find no statutory authority which would justify such a contract. SDCL 1-24-2 authorizes counties to exercise their powers jointly *with* other public agencies, or, in the alternative, to exercise the powers of other public agencies, when participating with them in an exercise of joint powers. However, this authority does not extend to cooperation with private corporations.

SDCL 7-8-20 contains the general powers of county commissioners. SDCL Ch. 7-18 contains the corporate powers and obligations of counties. And SDCL 10-12-18 authorizes taxation for weather modification. There is nothing in any of these sections which would authorize the purchase by a county, solely or cooperatively, of the property contemplated by your factual situation .

Counties, as well as other political subdivisions, are "authorized and directed" to establish local civil defense organizations. SDCL Ch.33-15, §26. The local organizations are to perform civil defense functions within the territorial limits of the applicable political subdivision. Section 28 Civil defense functions include the prevention of damage resulting from disasters caused by snow storm, wind storm, tornado, and cyclone. Section 1 (1). In order to carry out these functions, each political subdivision has the power to make appropriations for the payment of expenses of the civil defense organization. Section 30. Local civil defense organizations may also join with each other to form civil defense districts which shall receive appropriated money from each political subdivision. Section 33.

However, there is nothing in the civil defense chapter which would authorize local C. D. organizations to cooperate with private agencies for obtaining revenue or expending it. SDCL 33-15-34 authorizes local organizations to collaborate with other public and private agencies, but only for mutual aid arrangements for reciprocal civil defense and assistance in case of disaster too great to be dealt with unassisted. There is no provision for such collaboration for preventive functions.

The answer to your second question is also, NO. for the same reasons. A county may not do indirectly that which it is not permitted to do directly.

SDCL 9-11.1 authorizes the weather modification commission to cooperate with counties to carry out the provisions of SDCL 38-9 relating to weather modification. This is not broad enough, however, to include the purchase, in cooperation with a private corporation of a radar station.

I might add, that nothing would prevent the corporation from making a grant to the county to be used for the construction and operation of a weather radar station. The station would, however, have to be under the exclusive control of the county or of a similar public corporation. Nor is there a statute which would prevent the county from purchasing services from a privately owned radar facility.

Respectfully submitted,

Kermit A. Sande  
Attorney General