

OFFICIAL OPINION NO. 75-192, Authority of counties to fund ground water study and irrigation development project

STATE OF SOUTH DAKOTA
OFFICE OF
THE ATTORNEY GENERAL

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Mr. Vern W. Butler, Secretary
Department of Natural Resource
Development
Foss Building
Pierre, South Dakota 57501

OFFICIAL OPINION NO. 75-192

Authority of counties to fund ground water study and irrigation development project

Dear Mr. Butler:

You have requested an opinion based on the following factual situation:

Landowners in certain townships in Potter County desire to obtain information on the geologic and ground water characteristics of their area in order to develop ground water irrigation. However, the county-wide study under the supervision of the State Geological Survey is not scheduled until 1988. Therefore, the landowners have requested financial assistance from the Oahe Conservancy Sub-District and Potter County. The intent is to hire private drillers to do the necessary test drilling and development of production wells.

Based on the above factual situation you have asked the following specific questions:

1. Does a County have authority to provide funds to a Conservancy Sub-District to contract for a geologic and ground water study in parts of the County?
2. Can a County contract directly with private drillers to perform a geologic and ground water investigation in part of the County?

3. Can a County accept funds from either, or both, private persons and other governmental entities to conduct such investigations?

The South Dakota Supreme Court has held on several occasions that a county is a creature of statute and has no inherent authority, but only such powers as are expressly conferred upon it by statute and as may be reasonably implied therefrom. *State v. Hanson*, 68 N. W. 2d 480; *State v. Board of County Commissioners of Beadle County*, 300 N.W. 832. The general power of the Board of County Commissioners "to superintend the fiscal concerns of the county" found in SDCL 7-8-20(7) is not in itself sufficient authority for incurring specific indebtedness on behalf of the county.

Therefore, additional statutory authority is necessary to justify the use of county funds for geologic and ground water study precedent to an irrigation project, be it in cooperation with a conservancy subdistrict or under contract with a private concern.

The only applicable statutory references to county funding of irrigation studies and projects are of the following nature:

46-18-26. The subdistrict board of directors shall have the power to accept funds, property and services or other assistance, financial or otherwise, from federal, state, *and other public* or private *sources* for the purpose of aiding and promoting the construction, maintenance and operation of any or all water resources projects except that this section shall not authorize the acceptance of contributions or gifts of money from private sources.

46-18-27. The subdistrict board of directors shall have the power to co-operate with and furnish assurances of co-operation and as principal or guarantor to enter into a contract or contracts, with the United States of America, or any department or agency thereof, with agencies of the state of South Dakota, *with public entities of South Dakota*, with private corporations or with persons for the performance of obligations entered into with the United States, or any department or agency thereof, or other contractors, for the construction, operation or maintenance of water resources projects or for accomplishment of the purposes and intents of this chapter and chapter 46-17.

46-17-3(3). "Public entity" shall mean a county, township, municipality, political or administrative subdivision of state government, ...

However, I interpret these provisions as merely authorizing conservancy subdistricts to accept gifts from and enter into cooperative agreements with other public entities having authority to expend funds for irrigation and related projects. They cannot be so broadly construed as to permit an expenditure of county funds for the therein enumerated purposes. As is further stated in the *Beadle County* case:

The power to expend county funds seems so deep and vital to the people of this state that we do not rest this decision by a mere statutory reference to the duties of county commissioners as they are but officials to carry on transactions and business for the county and we therefore inquire into the powers conferred upon the counties.

Likewise, in the statutes here in question the mere fact that counties are by definition mentioned as one of the entities from which subdistricts may accept funds is insufficient to support the contention that they authorize appropriation of county funds.

I therefore affirm the holding of my predecessor, as found in 1923-24 AGR 125, that county commissioners cannot appropriate any county fund for any purpose whatsoever except as they may be specifically authorized by existing legislation to do or necessarily implied therefrom. If the Legislature should find that irrigation is a proper function for county funding it should specifically so state in a manner similar to that authorizing municipalities to operate and maintain irrigation projects. (See SDCL 9-37-21.)

The answer to your Question No. is NO.

In view of the foregoing I find it unnecessary to answer your Questions No. 2 and 3.

Respectfully submitted,

William Janklow
Attorney General

WJJ:LLV:dk