

OFFICIAL OPINION NO. 76-55, Eagle Butte Independent School District

May 18, 1976

Mr. Thomas C. Todd, State Superintendent
Elementary and Secondary Education
New State Office Building
Pierre, South Dakota 57501

OFFICIAL OPINION NO. 76-55

Eagle Butte Independent School District

Dear Mr. Todd:

You have requested an official opinion from this office based upon the following facts:

The Eagle Butte Independent School District No. 3 has been requested to enter into an agreement with an "Advisory Board" consisting of three members of the tribal council who are appointed to act as an education committee, three members of the Eagle Butte Independent School Board who are appointed by the chairman of the school board, and the president of the student council of the Cheyenne-Eagle Butte High School.

Based upon the following facts you ask:

With reference to Memorandum Opinion No. 75-47 can the Eagle Butte Independent School District No. 3 enter into an agreement with the "Advisory Board" which provides that the "Advisory Board" shall administer the schools of the district?

With reference to Memorandum Opinion No. 75-47 can the Eagle Butte Independent School District No. 3 enter into an agreement with the "Advisory Board" which would give the "Advisory Board" total control over the school budget and also have veto power over the expenditures of school funds by the Eagle Butte Independent School District?

Memorandum Opinion No. 75-47, which concludes that the Shannon County School District had authority to contract with the Unified School Board, is based on the premise that the

Unified School Board meets the requirements of subdivision C of § 4 of Public Law 93-638 and as such is a public agency which can lawfully enter into 'an agreement under the Joint Powers Act. In the present fact situation, it is not apparent that the Advisory Board referred to would have similar status as a "public agency." Joint powers agreements under SDCL 1-24 can be entered into between public agencies only.

Subdivision C of § 4 of Public Law 93-638 defines a tribal organization as:

"Tribal organization" means the recognized governing body of any Indian tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians and all phases of its activities: Provided that in any case where a contract is let or grant made to an organization, to perform services benefiting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting or making of such contract or grant;

In my opinion the Advisory Board you refer to is a tribal organization within the purview of subdivision C of § 4 of Public Law 93-638 and is therefore a public agency within the scope of SDCL 1-24. Unless the Advisory Board is a "public agency," SDCL 1-24 would not authorize the Eagle Butte Independent School District to enter into a joint powers agreement.

SDCL 1-24-2 provides that any public agency may enter into a joint powers agreement with another public agency and exercise jointly any powers that both signators to the agreement possess by law. This means that statutory powers of school boards which are not also powers of the Advisory Board, cannot be exercised jointly. SDCL 1-24-2 allows only a joint exercise of powers which both public agencies enjoy in their own right. SDCL 1-24-2 provides:

Any power or powers, privileges or authority exercised or capable of exercise by a public agency of this state may be exercised and enjoyed jointly with any other public agency of this state having such power or powers, privilege or authority, and jointly with any public agency or any other state or of the United States to the extent that the laws of such other state or of the United States permit such joint exercise or enjoyment. Any agency of South Dakota state government when acting jointly with any public agency may exercise and

enjoy all of the powers, privileges, and authority conferred by §§ 1-24-2 to 1-24-9, inclusive, upon a public agency.

It is my opinion that the Joint Powers Act does not allow the Eagle Butte Independent School District No.3 to enter into an agreement with the "Advisory Board" which would give the Advisory Board total control over the school budget and a veto power over the expenditures of school district funds. On the facts available to me it does not appear that the Advisory Board would have independent powers of this nature which would enable them to enter into a joint powers agreement under SDCL 1-24-2 which would allow such a broad joint exercise of powers. SDCL 1-24-2 it must be remembered requires that the public agencies entering into the joint powers agreement may exercise and enjoy jointly with any other public agency of the state, any powers with privilege or authority which they have and which the other public agency or agencies entering into the agreement also have. SDCL 1-24 does not allow public agencies to contract or delegate away their powers, authority and responsibility to anyone or any body that the public agency might desire to give them to. SDCL 1-24-2 contemplates a *joint* agreement and operation, *not* a *unilateral* delegation of authority.

Respectfully submitted,

WILLIAM J. JANKLOW
ATTORNEY GENERAL

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