

OFFICIAL OPINION NO. 76-89, Powers of local general purpose units of government to unite with local special purpose units of government, under the Joint Powers Act

September 29, 1976

Honorable E. C. Pieplow  
State Senator  
1415 North Third Street  
Aberdeen, South Dakota 57401

OFFICIAL OPINION NO. 76-89

**Powers of local general purpose units of government to unite with local special purpose units of government, under the Joint Powers Act**

Dear Senator Pieplow:

You have requested an opinion from this office in regard to the powers of local general purpose units of government to unite with local special purpose units of government, under the Joint Powers Act, to cooperate in ventures exceeding the scope, power, and privileges, of the authority conferred upon the special purpose government entity. The specific facts you present are as follows:

FACTS:

At the July 28, 1976, meeting of the Fourth Planning and Development District Commission (DPDC), eleven conservation districts requested voting membership on the planning commission. The representative speaking for the eleven conservation districts felt they could aid the planning district in attaining the goals and objectives established by the DPDC for the 115,094 people residing in their geographical boundaries, especially in the area of natural resource conservation. The Board of Directors decided to review the planning commission's bylaws and joint cooperative agreement before taking further action on the request.

Historically, the authority to form the six planning and development districts in the state of South Dakota fell under the purview of the Joint Exercise of Governmental Powers Act of 1966.

An executive order signed by former Governor Frank Farrar delineated the planning and development districts' boundaries on December 4, 1970. The state planning bureau assisted in organizing the fourth planning and development district in 1972. During this time frame, twenty-two units of government signed the enclosed Joint Cooperative Agreement, establishing the fourth planning and development district commission. All the original signatories of this agreement have been general purpose governments. Specifically, in district four, there were ten counties, eleven incorporated municipalities and the Sisseton-Wahpeton Sioux Tribe. The latter was removed by the commission for failure to live up to its financial obligations and for missing three consecutive planning commission meetings as outlined in the commission's bylaws.

South Dakota law allows general purpose governments broad planning powers which were conferred upon them in various parts of the South Dakota Code. These planning functions complement the overall purposes of general governments in that responsibilities for public welfare, safety, housing, economic development, etc., are within the perimeters of planning; therefore, within the realm of involvement of the planning and development commission. The commission's concerns are in broad areas outside the limited involvement of the soil conservation districts.

The laws of the State of South Dakota as expressed in SDCL 38-7 provide a very limited and specific scope for conservation districts. The scope of activities of the conservation districts is limited to "all renewable natural resources," mainly soil and water resources. For this reason, conservation districts are special purpose units of government. The South Dakota Code does not have nor does the Legislature intend to give the "powers, privileges or authority conferred upon general purpose governments to a conservation district or district."

Based upon the above facts you ask the following questions:

#### QUESTIONS

(1) Do the local general purpose units of government have the authority to share the powers outlined in Article IX, Section I, paragraph 1 of the Joint Powers Agreement, with conservation districts, or do the conservation districts by the limiting nature of the law that authorizes their formation, have the right to request full voting membership on the commission? For example, could voting rights be given to the conservation districts in the

DPDC's review of a health project or plan?

(2) Could the DPDC grant limited authority to the conservation districts through the existing joint cooperative agreement or would it necessitate a separate joint cooperative agreement, between the cities, counties and soil conservation districts, which does limit the functions to compatible areas of authority?

(3) If two separate cooperative agreements are necessary, what relationship, if any, could exist between the commission presently in existence and the organization formed under the limited joint cooperative agreement between the general purpose governments and soil conservation districts?

(4) Does the DPDC commission formed by the Joint Cooperative Agreement have the authority or right to add members to itself without the agreement of the governmental bodies who have signed the Joint Cooperative Agreement?

Article IX, Section I of the Joint Powers Agreement for the formation of the fourth planning and development district commission provides:

1. To prepare broad modular planning units for development of the district, including but not limited to population, economy, governmental services, utilities, education, housing, transportation, recreation, health, natural resources, manpower, law enforcement, social services, poverty and economic development.
2. To assist individual counties and municipalities in the district to participate more effectively in State and Federal Grant-in-Aid Programs.
3. To review and make recommendations on projects which will affect the development of the district, in accordance with the various plans and programs of the district.
4. To recommend projects which will enhance the development of all resources to be carried out through existing governmental units or through a combination of these as applicable under state laws.
5. To compile, prepare, publish, and disseminate information about the various resources of the district and sub areas.

6. To promote and assist in the creation of public and semipublic nonprofit organizations as needed for carrying out specific projects and programs initiated under federal and state laws.

7. To cooperate and coordinate its activities with local and state planning agencies and other districts and with federal agencies responsible for planning and developing and implementing plans for development.

8. To analyze existing Federal and State Grant-in-Aid Programs in an effort to pinpoint the handicaps rural areas suffer in competition with large urban areas for these grant moneys.

9. To prepare district-wide packages of projects, developed in relation to district development plans, for submission to various federal agencies for funding.

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 of 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.

In my opinion, the South Dakota Joint Powers Act (SDCL 1-24) does not authorize agencies to join together to perform duties and functions which are *not* common powers and duties of the signatory agencies. SDCL 1-24 is not in my view an elastic clause allowing governmental reorganization whereby public agencies can give, take, and exercise jointly, whatever governmental functions of any other agency that any other governmental agency is willing to enter into a joint powers agreement on. The concept of *joint* powers, in my opinion, means that there is an inherent similarity of individual powers which are to be exercised in a joint manner under a Joint Powers Agreement.

IN RE QUESTION 1.

In my view, the answer to your first question is NO! I find nothing in the statutory powers of soil conservation districts that explicitly or implicitly involves powers such as those included in the provisions of Article IX, Section I, paragraph 1 of the above cited Joint Powers Agreement of the fourth district planning and development commission. Accordingly, the commission cannot lawfully make the soil conservation district a full equal member of the commission capable of exercising powers jointly, which the conservation district does not have individually.

#### IN RE QUESTION 2.

In response to your second question, I believe the more appropriate approach would be to have a separate agreement between the commission *membership* and the soil conservation district, which would deal with the limited areas of joint authority functions and powers of the parties. I do not, however, see any *prohibition* in SDCL 1-24 which would disallow an approach whereby the commission membership would grant the soil conservation district a limited participation and role in the areas where the joint powers of the commission members and the conservation district are found to exist. Accordingly, it is my opinion that a separate joint powers agreement would not be required here as long as the existing joint powers agreement provides for such a limited participation membership and the scope of participation which such limited members have in the affairs of the commission. It is also my opinion that the joint cooperative agreement contract of the district which you have submitted to me along with your request for this opinion, should be amended to deal with this specific matter. This of course would require the consent of all the original signatory agencies.

#### IN RE QUESTION 3.

In regard to your third question, if a separate Joint Powers Agreement were made between the present commission membership and the soil conservation district, that new limited Joint Powers Agreement could not extend beyond the powers jointly held by the signatories. Consequently, the now limited agreement would be of continuing significance in the limited area of its application.

As to what relationship could exist between two joint power "administrative" or "legal" entities, I cannot answer that question without reference to more specific facts. Depending

on the powers held by the signatories to such agreements, there could and would be differences in the answers to this question. I do not, however, believe that SDCL 1-24 contemplates Joint Powers Agreements between joint power "administrative" or "legal" entities unless the entities *and* their signatory agencies, in fact, have and agree to exercise *joint* powers. The South Dakota Joint Powers Act does not contemplate substantive governmental reorganization by contract.

IN RE QUESTION 4.

In regard to your fourth question, I believe the individual members of the Joint Powers Agreement should approve the addition of any and all new members to the agreement. I believe the DPDC commission formed by the joint cooperative agreement can be given the authority to make an initial conditional approval of new members, but in the last analysis, I believe the final approval of new members to the agreement rests with the signatories to the original agreement.

Respectfully submitted,

WILLIAM J. JANKLOW  
ATTORNEY GENERAL

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