

OFFICIAL OPINION NO. 77-59, Mileage allowance for county commissioners

July 20, 1977

Mr. Neal Strand
Executive Director
South Dakota Association of
County Commissioners
214 East Capitol
Pierre, South Dakota 57501

Official Opinion No. 77-59

Mileage allowance for county commissioners

Dear Mr. Strand:

You have asked the following question:

QUESTION:

Can County Commissioners set their mileage rate at more than ten cents per mile, not exceeding twenty cents per mile?

SDCL 7-7-4, entitled "mileage allowance for county commissioners," reads as follows:

The county commissioners shall be paid for traveling expenses for each mile traveled in the discharge of their official duties at the rate of ten cents per mile. For the purpose of this section, traveling expense incurred by such officers to attend meetings in the state of South Dakota called for the purposes of instructing or exchange of information pertaining to county officers and government, shall be considered miles traveled in the discharge of their official duties.

SDCL 7-7-24, entitled "mileage allowance to county officials," reads as follows:

All county officials shall be paid for traveling expenses for each mile traveled in the

discharge of their official duties at the rate of not to exceed twenty cents per mile, as determined by the board of county commissioners subject to any minimum mileage set by law.

These two statutes, the former last amended in 1968 and the latter amended to include county commissioners in 1974 and amended again in 1976, both purport to dispose of the question. If they cannot be reconciled, it may be found that the more recently enacted or amended statute (i.e. SDCL 7-7-4) is controlling, depending upon manifestations of legislative intent. 82 C.J.S. § 298.

The phraseology of the two laws, however, averts the problem of resolving what at first appears to be a conflict in statute. SDCL 7-7-4 establishes a flat rate of ten cents per mile while SDCL 7-7-24 provides only that the rate to be paid not exceed twenty cents per mile. It thus appears that the statutes are not repugnant nor inconsistent, because the ten cent rate required by SDCL 7-7-4 does not exceed the twenty cent limit imposed by SDCL 7-7-24. The more specific statute (SDCL 7-7-4) controls, but without contravening the broader statute.

In my opinion, county commissioners are limited to ten cents per mile until such time as SDCL 7-7-4 is repealed or amended.

Respectfully submitted,

William J. Janklow
Attorney General

WJJ:TL:mf