

OFFICIAL OPINION NO. 79-27, Contribution of county funds to railroad users' organization

August 9, 1979

Mr. Norman E. Cihak  
Charles Mix County Auditor  
Lake Andes, South Dakota 57356

Official Opinion No. 79-27

**Contribution of county funds to railroad users' organization**

Dear Mr. Cihak:

You have requested an official opinion from this office in regard to the following question:

QUESTION:

May Charles Mix County contribute monies from its funds to the Nappa Platte Users Association, a county wide organizations to stop railroad abandonment?

Based on the facts that you have related in your question, my answer is no.

A county is a creature of statute. Its powers are either expressly conferred by statute or reasonably implied from those expressly granted. *South Dakota Employers Protective Association v. Poage*, 65 S.D. 198, 272 N.W. 806 (1937); *State ex rel. Jacobsen v. Hansen*, 75 S.D. 476, 68 N.W.2d 480 (1955). Consequently, the county board can only exercise authority in line with county power. *State v. Hansen, supra*.

The situation that your question poses is analogous to that in *State ex rel. Bell v. Board of County Commissioners of Beadle County*, 68 S.D. 237, 300 N.W. 832. In that case, the South Dakota Supreme Court held that county commissioners had no authority to appropriate money from the county treasury to a state-wide organization formed to assist in adopting a state school fund amendment to the South Dakota Constitution even though the organization and its aims would benefit the county.

There appears to be no express or implied statutory authority that would allow Charles Mix County to contribute to the Users Association. Although the stoppage of railroad abandonment might benefit Charles Mix County, SDCL 7-8-20, whose predecessor

was construed in the Bell case, *supra*, does not authorize such an appropriation or expenditure. The same is true of SDCL 49-17 which deals with state aid to railroads. Unless the Nappa Platte Rail Users Association is a public agency under SDCL 1-24-1 and 1-24-7 or a nonprofit corporation under SDCL 7-32-9, I can find no authority for such a contribution. (See Official Opinions 75-25 and 78-13.)

Respectfully submitted,

Mark V. Meierhenry  
Attorney General

MVM:SCA:esp