

Official Opinion No. 80-48, SDCL 10-39A Energy Development Impact Fund

July 18, 1980

The Honorable William J. Janklow  
Governor of South Dakota  
State Capitol  
Pierre, South Dakota 57501

Official Opinion No. 80-48

**SDCL 10-39A Energy Development Impact Fund**

Dear Governor Janklow:

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

**FACTS:**

The 1979 Legislature changed sections of Chapter 10-39A of the South Dakota Codified Laws. Chapter 10-39A deals with the energy mineral severance tax. SDCL 10-39A-8 was changed to specify the deposit of severance tax money to an energy development impact fund rather than the state general fund. SDCL 19-39A-8-1. established an energy development impact fund and provided for its use.

The City of Hot Springs, on December 11, 1979, and the Edgemont School District 23-1, on December 13, 1979, requested monies pursuant to SDCL 10-39A-8.1. Hot Springs requested monies for curb and gutter and hard surface asphaltic concrete for a two-block area. The Edgemont School District requested money for the renovation of buildings, the replacement of an armory, and the addition of geothermal heat to modified buildings.

Based on the above facts, you have asked the following questions:

**QUESTIONS:**

1. Can any unit of government in South Dakota apply for and receive monies from the Energy Development Impact Fund under Chapter 10-39A?

2. Must money allocated under SDCL 10-39A-8.1 be used only for purposes \_specified under SDCL 10-39A-10?

3. Must the Director of the Office of Energy Policy approve warrants for money allocated under SDCL 10-39A-8(1) and SDCL 10-39A-8.1?

IN RE QUESTION NO. 1:

SDCL 10-39A-8.1 provides:

There is hereby created a special fund within the state treasury to be known as the energy development impact fund for the purpose of offsetting economic, social and physical impacts resulting from energy development and production. The state investment officer is responsible for the investment of the energy impact funds. All money in the fund shall be budgeted and expended in accordance with chapters 4-7, 4-8, 4-8A and 4-8B.

An earmarked percentage of proceeds of the energy minerals severance tax (SDCL 10-39A) is the primary source of revenues for the energy development impact fund. Counties affected by energy mineral severance also receive an earmarked percentage of severance tax proceeds under SDCL 10-39A-8 (effective January 1, 1980):

All taxes, interest and penalties imposed and collected by the secretary under this chapter shall be distributed as follows:

(1) One-half shall be returned to the county in which the energy \_minerals or mineral products were severed;

(2) One-half shall be paid into the state treasury and credited to the energy development impact fund.

Funds paid to counties are allocated and distributed in accordance with the provisions of SDCL 10-39A-10:

Upon receipt of any funds paid to a county under the provisions of this chapter, the county treasurer shall deposit the funds in a trust and agency account. The county auditor shall at the direction of the board of county commissioners, allocate the funds to be distributed by the county treasurer for school and road purposes to offset social, economic or physical

impacts, either direct or indirect, resulting from energy development or production in the county.

Since SDCL 10-39A-8.1 does not restrict eligibility for state energy development impact funds to any particular class, it is my opinion that units of government or quasi-governmental units, which suffer economic, social and physical impacts resulting from energy development and production could be eligible recipients of legislative appropriations of energy development impact fund monies.

The fact that school districts, townships or counties might also apply to their local board of county commissioners for county severance tax funds would not, in my opinion, preclude application by a school district, township, quasi- governmental unit, or county for state energy development impact fund appropriations. That is not to say that 'double-dipping' would be allowed; only that applications could be made to the board of county commissioners, an appropriation could be sought from the state energy development impact fund, or partial funding could be sought from both sources, to help finance a project designed to offset economic, social and physical impacts resulting from energy development.

The answer to your first question is 'Yes.' A unit of government within the State of South Dakota could seek an appropriation from the state energy development impact fund to offset economic, social and physical impacts resulting from energy development and production.

IN RE QUESTION NO. 2:

SDCL 10-39A-10 limits the purposes for which the county's share of severance tax funds may be expended to 'school and road purposes to offset social, economic or physical impacts, either direct or indirect, resulting from energy development or production in the county.' SDCL 10-39A-8.1 does not restrict allocation of state energy development impact funds to 'school and road purposes.' Therefore the state share of severance tax revenues could be used to finance a wider range of projects. Because expenditure of state energy development impact funds is not limited to school and road purposes, the state energy development impact fund could be used to offset any economic, social and physical impact resulting from energy development and production.

The answer to your second question is 'No.' Money allocated under SDCL 10-39A-8.1 is not subject to the same restrictions specified under SDCL 10-39A-10.

IN RE QUESTION NO. 3:

SDCL 10-39A-9 provides:

Funds paid to counties under this chapter shall be paid out on warrants drawn by the state auditor on vouchers approved by the director of the office of energy policy or his designee. (Emphasis added.)

Clearly, warrants for money allocated under SDCL 10-39A-8(1) must be approved by the Director of the Office of Energy Policy or his designee. The answer to the first part of your third question is therefore 'Yes.'

Regrettably, the provisions of SDCL 10-39A-8.1, relating to allocation of the state energy development impact fund, are less clear as to who approves vouchers to draw on the state fund. SDCL 10-39A does not expressly name the Director of the Office of Energy Policy as administrator of the state energy development impact fund, nor is the Director of the Office of Energy Policy expressly granted expenditure authority over the state fund by the Legislature. Furthermore, the Bureau of Finance and Management has deemed the state energy development impact fund (Fund #213) to be a fund within the Department of Revenue. Thus, it would seem that the Secretary of Revenue may be the de facto administrator of the fund, although he, too, lacks express expenditure authority from the Legislature.

It is my opinion that the current lack of expenditure authority for funds allocated pursuant to SDCL 10-39A-8.1 can be cured. Since SDCL 10-39A-8.1 requires a legislative authorization and appropriation prior to expenditure of state energy development impact funds, the Legislature should, in the appropriations process, insert an expenditure authorization clause in any special bill appropriating money out of the energy development impact fund. The expenditure authorization clause should specifically designate the person who will be authorized to approve vouchers for expenditures from the fund.

The answer to the second part of your third question is indefinite. If the Legislature will specify expenditure authority in any special bill appropriating money from the energy development impact fund, the recipient of the Legislature's grant of expenditure authority

will be the person authorized to approve vouchers drawn on the state energy development impact fund.

Respectfully submitted,

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Attorney General