

Official Opinion No. 82-1, Allocation of Revenue Sharing Funds

January 4, 1982

Mr. John R. Steele  
State's Attorney  
Aurora County Courthouse  
Plankinton, South Dakota 57368

Official Opinion No. 82-1

### **Allocation of Revenue Sharing Funds**

Dear Mr. Steele:

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

#### **FACTS:**

Aurora County and each of the organized civil townships of the county are recipients of federal revenue sharing funds. The amount received by each of the townships is relatively small, usually ranging in the neighborhood of \$300.00 to \$500.00 per year, according to the information available to me which is incomplete. As you are undoubtedly aware, receipt of revenue sharing funds entails compliance with the public participation requirements of the federal government. Compliance with these requirements entails publication of various public notices and some administrative paper work, neither of which is inordinate in itself, but which appears to be disproportionate to the amount of revenue received, in the view of certain of our township supervisors.

The federal rules governing revenue sharing funds provide that, in the event that a local government, such as a board of township supervisors, does not comply with all of the necessary requirements, including the public participation requirements, the allocation of revenue sharing funds to that local government will be deemed to be waived, and the funds paid to the next higher subdivision of government. In this case, if the townships do not comply with the procedure, their funds are waived by them and paid over to Aurora County. Accordingly, discussions have been had between some of the township supervisors, and the county commission, as to whether the townships could avoid the added expense of publishing the various notices, by agreeing to waive their revenue sharing funds

and have the same paid over to Aurora County. They would do this with the agreement of the Aurora County Commissioners that the county would then pay over the amounts allocated to each township to the respective townships. The payments to the townships would be allocated to the road maintenance budgets of the townships.

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

QUESTION:

If Aurora County receives revenue sharing funds that have been waived to the county by an organized civil township, may the county they properly, under South Dakota law, disburse the amount of revenue sharing funds that had been allocated to the township to that township for road maintenance purposes?

In answer to your question, let me first of all state that once a township 'passes' on the revenue sharing moneys and the moneys go to the county, the moneys become county moneys and are subject to the same expenditure limitations as apply to any other county moneys.

Since a county is a creature of statute and has no inherent authority, but only such powers as are expressly conferred upon it by statute and as may be reasonably implied from powers expressly granted (State ex rel. Jacobsen v. Hansen, 68 N.W.2d 480 (S.D. 1955); State ex rel. Bell v. Board of Com'rs of Beadle County, 300 N.W. 832 (S.D. 1941), it is necessary to find general statutory authority permitting counties to disburse county moneys to civil townships before one can answer your question in the affirmative. I am unaware of any such broad general authority. Therefore, the answer to your question is no.

Respectfully submitted,

Mark V. Meierhenry  
Attorney General