

Official Opinion No. 82-24, Apportionment of Bankhead-Jones Monies

April 21, 1982

Mr. Gordon K. Milbrandt
Auditor General
Department of Legislative Audit
435 South Chapelle
Pierre, South Dakota 57501

Official Opinion No. 82-24

Apportionment of Bankhead-Jones Monies

Dear Mr. Milbrandt:

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

FACTS:

Jackson County has received \$117,711.99 from the United States Treasurer under the provisions of the Bankhead-Jones Farm Tenant Act for the period of March 9, 1977, through March 24, 1981. These monies were deposited by the county into the County Road and Bridge Fund.

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

QUESTION:

May the county apportion Bankhead-Jones monies for school or road purposes, or both, or must these monies be apportioned to the school districts?

The payment provisions of the Bankhead-Jones Farm Tenant Act are codified at 7 U.S.C. § 1012. The section states:

As soon as practicable after the end of each calendar year, the Secretary shall pay to the county in which any land is held by the Secretary under this subchapter, 25 per centum of the net revenues received by the Secretary from the use of the land during such year. In

case the land is situated in more than one county, the amount to be paid shall be divided equitably among the respective counties.

Payments to counties under this section shall be made on the condition that they are used for school or road purposes, or both. This section shall not be construed to apply to amounts received from the sale of land.

SDCL 13-14-3 is the South Dakota statute dealing with the distribution of Bankhead-Jones monies by the counties. That section states:

All funds that shall be received by the several counties of this state, from the secretary of agriculture of the United States, out of the revenues received by the secretary from the use of land acquired by the United States under the provision of 'The Bankhead-Jones Farm Tenant Act' shall be apportioned, by the county commissioners of each county, among the several school districts having children requiring school facilities, according to the acreage of such land in said districts, and upon such apportionments, shall be paid to such school districts by the county treasurers, to be used for school purposes in accordance with the provisions of said federal act.

The apparent conflict in these two statutes stems from the provision in each statute for the allowable uses of the funds. The federal law requires that the funds be 'used for school or road purposes, or both,' while the state statute requires that the funds be 'used for school purposes in accordance with the provisions of [the Bankhead-Jones Farm Tenant Act].'

Upon closer reflection, however, no conflict actually exists between these two statutes. The federal law sets forth the permissible uses for the funds. That law provides for two different uses. The South Dakota law simply chooses which of the two permissible uses under federal law is to be followed by South Dakota counties that receive Bankhead-Jones money.

Bankhead-Jones money is sent directly to county governments, rather than first passing through the state. Although the state has little direct contact with the money, the money is delivered to a subdivision of the state. Counties are creatures of state statute. State statute sets forth the powers, duties and responsibilities that are possessed by each county of the state.

One of the particular duties placed on the counties is found in SDCL 13-14-3, which states that Bankhead-Jones money is to be used for school purposes. The state statute simply

makes the choice for the county as to which of the two permissible uses of money is to be followed. Because the state statute does not require some action or make some provision that is contrary to the federal law, the statute can be read consistently with the federal law. Therefore, it is my opinion that the answer to your question is that money received by Jackson County under the provisions of the Bankhead-Jones Farm Tenant Act must, according to the provisions of SDCL 13-14-3, be apportioned to the school districts of the county and used for school purposes.

Respectfully submitted,

Mark V. Meierhenry
Attorney General