

OFFICIAL OPINION NO. 88-44, Reimbursement of lobbying expenses by county officials

September 19, 1988

Mr. Dennis A. Groff
Pennington County State's Attorney
300 Kansas City Street
Rapid City, South Dakota 57701

Official Opinion No. 88-44

Reimbursement of lobbying expenses by county officials

Dear Mr. Groff:

You have requested an Official Opinion from this office regarding the following factual situation:

FACTS:

A county official, such as a commissioner, sheriff, auditor, etc. does lobbying in Pierre regarding legislative bills that may affect county government. As a result, the county official has incurred personal expenses for food, travel, and lodging.

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

QUESTIONS:

1. Whether county officials may be reimbursed for expenses associated with lobbying?
2. Whether the county commissioners may expend any part of the budget for lobbying, either directly or indirectly?
3. Whether SDCL 7-7-4 explicitly limits reimbursement to instances where travel is for the discharge of official duties; and if so, is attendance at educational conferences, meetings, and conventions, as contemplated in SDCL 7-7-25, considered as the discharge of official duties for which mileage is reimbursable?

IN RE QUESTION NO. 1:

A county is vested with only such powers as are expressly conferred by statute, or which may be reasonably implied from the powers expressly granted. Pearson v. Johnson, 59 S.D. 163, 238 N.W. 644 (1931).

My review of the South Dakota statutes has revealed no express provision which identifies "lobbying" as an official duty of county officials. In my opinion, however, the statutes reasonably imply that "lobbying"--in the form of providing legislative committees with instruction, information, or testimony pertaining to the betterment and advancement of county government--is among the official duties of county officials. Thus, any actual and necessary expenses they incur may be reimbursed provided the county commissioners have given their prior authorization and approval.

SDCL 7-7-3 states that county commissioners may receive allowances either in per diem or monthly salary (in accordance with the limitations prescribed in § 7-7-5), but in either instance may, in addition, receive mileage for the distances actually traveled when engaged in their official duties.

For example, SDCL 7-7-4 provides:

The county commissioners shall be paid traveling expenses for each mile traveled in the discharge of their official duties of not more than the state rate. For the purpose of this section, traveling expense incurred by county commissioners 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, are miles traveled in the discharge of their official duties. (Emphasis added.)

The intent behind SDCL §§ 7-7-3 and 7-7-4 is obviously to enable county commissioners to attend those meetings that touch upon their county's concerns. Thus, if one is in the discharge of his official duties while traveling to meetings pertaining to county officers and government, the reasonable implication is that the person is also discharging official duties while attending the meeting. As such, county commissioners may be reimbursed for instructing or exchanging information at meetings of the Legislature provided these are "meetings" within the meaning of the statute. I conclude that they are.

As a democratic forum, the Legislature requires instruction and the exchange of information to evaluate the merits of its proposed enactments. Since counties are creatures of law, among the proposed enactments necessarily considered by the Legislature are matters

"pertaining to county officers and government." Consequently, my interpretation is that legislative meetings are most pertinent, and the Legislature most certainly intended for county commissioners to attend them as part of their official duties. As stated in Stanson v. Mott, 551 P.2d 1, 9 (Cal. 1976):

(O)ne of the primary functions of elected and appointed officials is, of course, to devise legislative proposals to attempt to implement the current administration's policies. Since the legislative process contemplates that interested parties will attend legislative hearings to explain the potential benefits or detriments of proposed legislation, public agency lobbying, within the limits authorized by statute, in no way undermines or distorts the legislative process. (Emphasis supplied.)

While the Legislature does not meet solely to consider issues "pertaining to county officers and government," to the extent it does consider such matters, legislative meetings are logically within the scope of SDCL 7-7-4. The county commissioners' accompanying actual and necessary expenses accordingly fall within the purview of SDCL 7-7-3 and thus may be reimbursed.

This construction is reinforced by the even broader statutory provisions in SDCL 7-7-25. It provides that:

County commissioners, county highway superintendents, county auditors, county treasurers, registers of deeds, state's attorneys, sheriffs, county assessing officers and county coroners are hereby authorized to attend educational conferences, meetings, and conventions held and conducted within or without the state of South Dakota pertaining to the betterment and advancement of county government as authorized by resolution of the board of county commissioners. (Emphasis added.)

SDCL 7-7-26 gives counties the right to reimburse the actual and necessary expenses incurred by the county officers designated in SDCL 7-7-25 who attend meetings pertaining to the betterment and advancement of county government. This, however, is subject to prior authorization and approval by the county commissioners.

By enacting SDCL 7-7-25, the Legislature has acknowledged that as public servants, these officials must not be impeded from bettering and advancing their county's interests. I am, therefore, of the opinion that these officials' attendance at meetings of state legislators

addressing concerns or causes pertaining to the "betterment and advancement of county government" may be viewed as within the discharge of their official duties.

Attorney General's Report (1937-1938, p. 538) is hereby overruled because the statutes have changed. That opinion was based upon §§ 5876 and 5878 of the 1929 Compiled Laws and held that there was no statutory authority to permit reimbursement of a county commissioner's lobbying expenses, even if incurred in good faith. Ample authority now exists to support my present conclusion because modern statutes have expanded the express and implied powers of county officials.

The answer to your first question is "YES."

IN RE QUESTION NO. 2:

You next inquire more generally whether county monies may be expended either directly or indirectly for lobbying activities.

Consistent with the foregoing, and in recognition of the limitations, county funds may be used to reimburse county officials for their actual and necessary expenses incurred in furtherance of lobbying activities. Whether, however, county funds may be expended to directly finance the employment of a private individual or firm solely for county lobbying purposes is another matter. There does not appear, in my opinion, to be authority under statute for such action.

Funds may, however, be expended indirectly for such services under SDCL 7-7-28 through the contribution of annual dues to the county commissioner's association. SDCL 7-7-28 provides:

The county commissioners of any county are also authorized to join with the commissioners of other counties in formation of an association of county commissioners of this state for the purpose of securing concerted action among the counties in behalf of such matters, measures and county affairs as the association shall deem to be beneficial to and in the common interest of said counties. Such association shall have power and authority to hold meetings for the discussion and consideration of matters as affect the welfare of the counties.

The board of county commissioners is hereby authorized and empowered to annually appropriate funds for the payment of reasonable annual dues in said association.

To the extent that dues paid to the county commissioners association are used to fund lobbying efforts on the part of the association they are expended by the counties, albeit indirectly, for lobbying expenses.

IN RE QUESTION NO. 3:

Since reimbursement for expenses incurred by county officials ultimately finds its source in tax revenue, it is my opinion that miles traveled to further a personal end is not a proper charge against the county. Thus, I conclude that SDCL 7-7-4 explicitly limits mileage reimbursement to instances where travel is for the discharge of official duties.

Additionally, since miles traveled to attend SDCL 7-7-4 meetings are in the discharge of official duties, it is reasonable to conclude that attendance at SDCL 7-7-25 educational conferences, meetings, and conventions (including legislative meetings) is in the discharge of official duties. Therefore, I conclude that mileage expenses incurred as a result thereof are within the ambit of the actual and necessary expenses which may be reimbursed pursuant to SDCL 7-7-26.

The answer to your third question is "YES."

Respectfully submitted,

Roger A. Tellinghuisen
Attorney General