

OFFICIAL OPINION NO. 89-04, Possible referendum involving resolution to purchase highway maintenance

February 9, 1989

Mr. C. D. Kell
Jones County State's Attorney
P. O. Box 485
Murdo, South Dakota 57559

OFFICIAL OPINION NO. 89-04

Possible referendum involving resolution to purchase highway maintenance equipment

Dear Mr. Kell:

You have requested an official opinion relating to the following factual situation:

FACTS:

The Jones County Commissioners advertised for a bid for a truck-tractor and gravel trailer to be used for county road maintenance. After receiving several bids thereon, the County Commission entered a resolution which accepted one of the bids. A group of citizens in Jones County now would like to refer the resolution accepting the bid on the highway maintenance equipment to a county-wide vote in order to either accept or reject the County Commission's decision in this matter.

Based upon this factual situation, you have asked the following question:

QUESTION:

Is the County Commission's decision to purchase highway maintenance equipment subject to the referendum process set out in SDCL ch. 7-18A?

IN RE QUESTION:

From the information which I have received to date, it appears that the rationale for receiving bids on additional highway maintenance equipment was simply due to a need to upgrade the equipment which is currently used for county road maintenance. As such, it

appears that this action constitutes the execution of a plan (county road maintenance) previously adopted by the county commission and, consequently, should be deemed an administrative decision. See SDCL 7-18A-15.1 Obviously, counties have the inherent responsibility for the improvement and maintenance of county roads. SDCL 31-12-5; SDCL 31-12-6. In fact, South Dakota law is quite clear that the board of county commissioners is the sole entity vested with the authority to accept bids and ultimately purchase the very type of highway maintenance equipment as involved in this factual situation. SDCL 31-12-21. The foregoing statute specifically provides:

The board of county commissioners is hereby empowered to purchase drags, road planers, tractors, and other approved mechanical devices to maintain properly the county highway system.

The county commission, which constitutes elected representation of the county having general control over its property and the management of its business and physical affairs, clearly can exercise discretion over matters under its authority as conferred upon it by state statute. *State ex rel. Jacobsen v. Hansen*, 68 N.W.2d 480 (S.D. 1955). The exercise of such statutory authority is not subject to referendum. SDCL 7-18A-15.1. As a result, this resolution amounts to an administrative decision within the province of the county commission and therefore is not subject to the referendum process. See Attorney General's Opinion, No. 88-56, attached.

7-18A-15.1. Any legislative decision of a board of county commissioners is subject to the referendum process. A legislative decision is one that enacts a permanent law or lays down a rule of conduct or course of policy for the guidance of citizens or their officers. Any matter of a permanent or general character is a legislative decision.

No administrative decision of a governing body is subject to the referendum process, unless specifically authorized by this code. An administrative decision is one that merely puts into execution a plan already adopted by the governing body itself or by the Legislature. Supervision of a program is an administrative decision. Hiring, disciplining and setting the salaries of employees are administrative decisions.

The resolution involved herein is not a legislative decision which would be subject to the referendum process because it in no way enacts "a permanent law or lays down a rule of conduct or course of policy for the guidance of citizens or their officers." SDCL 7-18A-15.1. In fact, it may well be that the resolution to purchase this type of highway maintenance

equipment is a decision which provides for the necessary support of county government. SDCL 7-18A-15. As such, the decision would not be subject to referendum. S.D. Const. art. III, 1. As previously indicated, counties have the direct responsibility for improving and maintaining roads within their jurisdiction. See also SDCL 31-12-19. County highway departments and employees thereof are established by state statute. SDCL ch. 31-11. The maintenance equipment which the county commissioners are authorized to purchase subsequently becomes a part of the inventory accounted for by the county highway department. SDCL 31-11-7. Without the proper maintenance equipment the county highway department may become inadequate and unable to properly carry out their function of improving and maintaining county roads.

In light of the foregoing, it is my opinion that the statutes are clear in setting out that this type of resolution for the purchase of highway maintenance equipment is not subject to the referendum process. Accordingly, the decision to purchase such equipment is not referable to a county-wide vote of the electorate.

Respectfully submitted,

ROGER A. TELLINGHUISEN
ATTORNEY GENERAL

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