

OFFICIAL OPINION NO. 90-26, Apportionment and distribution of Bankhead-Jones monies under SDCL 13-14-3

June 27, 1990

James M. White, Chairman
Fall River County Board of County Commissioners
Fall River County Courthouse
Hot Springs, SD 57747

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Apportionment and distribution of Bankhead-Jones monies under SDCL 13-14-3

Dear Mr. White:

You have requested an opinion from this Office regarding the following factual situation:

FACTS:

As Chairman of the Fall River County Board of County Commissioners, you are requesting a reexamination of Opinion No. 82-24 found in 1981-82 Attorney General Report (AGR) at 173 in which my predecessor interpreted SDCL 13-14-3 and 7 U.S.C. 1012 (Bankhead-Jones Act). The previous interpretation of these two statutes required that monies received from the Bankhead-Jones Farm Tenant Act were to be paid over to school districts and used only for school purposes.

The United States Supreme Court in *Lawrence Co. v. Lead-Deadwood School District*, 469 U.S. 256, 105 S.Ct. 695, 83 L.Ed.2d 635 (1985) addressed a provision similar to SDCL 13-14-3 and found it unconstitutional. Presently, Fall River County distributes 70 percent of the Bankhead-Jones monies to the school district and 30 percent of the funds go to county roads. This is consistent with 7 U.S.C. 1012.

Fall River County has experienced a recurring problem during the last three legislative audits of the county. In these audits, the auditors have found that there is a deficiency in the way Fall River County distributes its Bankhead-Jones monies. The auditor recommends that those funds received by the county under the provisions of the Bankhead-Jones Farm Tenant Act be distributed to affected school districts. The auditor consistently relies upon SDCL 13-14-3 and 1981-82 AGR 173 in making this determination. You note that the

auditor does concede that SDCL 13-14-3 is unenforceable given the United States Supreme Court's decision. However, the auditor still continues to find the manner in which Fall River County distributes its funds, which is consistent with the provisions of 7 U.S.C. 1012, deficient because all of those funds do not go to the school district as required by SDCL 13-14-3 and 1981-82 AGR 173.

Based upon these facts, you have asked the following question:

QUESTION:

Whether SDCL 13-14-3 still controls the distribution of the Bankhead-Jones Farm Tenant Act monies in light of the Lawrence County v. Lead-Deadwood School District decision.

IN RE QUESTION:

The Bankhead-Jones Farm Tenant Act was passed by the Congress to pay monies to the various counties that contain certain governmental lands. The payments to the counties are made to replace the real property taxes lost by the county because the federal lands are nontaxable. The pertinent Bankhead-Jones Farm Tenant Act section that is applicable here is 7 U.S.C. 1012, which reads as follows:

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.

The apportionment and distribution of these Bankhead-Jones Farm Tenant Act monies is addressed by the South Dakota Legislature in SDCL 13-14-3, which reads in full as follows:

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 apportionment, 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. (Emphasis added.)

By enacting SDCL 13-14-3, the South Dakota Legislature has directed that counties use the Bankhead-Jones monies for schools only, while the federal statutes authorize the use of the money by the counties for both schools and roads.

A similar issue was addressed by the United States Supreme Court in *Lawrence County v. Lead-Deadwood School Dist.*, 496 U.S. 256, 105 S.Ct. 695, 83 L.Ed.2d 635 (1985). In the Lawrence County case, a federal payment in lieu of taxes statute allowed local governments to use the money "for any governmental purpose." The corresponding state statute required that the funds be distributed in the same way that counties distribute general tax revenues. The United States Supreme Court found that South Dakota statute was unconstitutional under the Supremacy Clause.

Because existing methods of funding did not provide local governments with the funds and flexibility needed to meet the demands created by the presence of federal lands in their jurisdictions, Congress crafted a scheme designed to ensure that the funds would reach and be placed at the disposal of the affected local governments. The attempt of the South Dakota legislation to limit the manner in which the counties or other qualified local governmental units may spend federal in-lieu-of-tax payments obstructs the congressional purpose and runs afoul of the Supremacy Clause. Congress intended the affected units of local government, such as Lawrence County, to be the managers of these funds, not merely the State's cashiers.

Lawrence County v. Lead-Deadwood School Dist., 469 U.S. at 270, 105 S.Ct. at 703, 83 L.Ed.2d at 646. This Office is not authorized to declare statutes unconstitutional; nevertheless I am of the opinion that SDCL 13-14-3 cannot be enforced due to the Supremacy Clause of the United States Constitution. The Supreme Court was quite clear that it is the counties, and not the state that have the absolute discretion to use the Bankhead-Jones monies "for school or road purposes, or both." Further, any reliance upon SDCL 13-14-3 by state auditors is misplaced and should be disregarded. This opinion overrules 1981-82 AGR 173 and any other inconsistent opinions issued by this Office.

Respectfully submitted,

ROGER A. TELLINGHUISEN
ATTORNEY GENERAL

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