

OFFICIAL OPINION NO. 90-45, State Legislator's Interest in Existing and Future State Contracts

December 10, 1990

Terry C. Anderson, Director  
Legislative Research Council  
500 East Capitol  
Pierre, SD 57501-5070

**OFFICIAL OPINION NO. 90-45**

State legislator's interest in existing and future state contracts

Dear Mr. Anderson:

You have requested an official opinion from this office concerning the following factual situation:

**FACTS:**

The Legislative Research Council currently carries an accidental death or dismemberment insurance policy on the members of the South Dakota Legislature. This policy is issued by an insurance company through a Pierre insurance agency. The insurance policy was obtained through competitive bids, and the resulting contract went into effect on May 1, 1990, and continues through April 30, 1991. Recently, a partner of the Pierre insurance agency was elected to the South Dakota Legislature and will be serving for the first time during the 1991 legislative term.

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

**QUESTIONS:**

1. Does the election of a partner of the Pierre insurance agency to the South Dakota Legislature have an effect on the current insurance policy obtained by the Legislative Research Council?
2. If the answer to your question is no, is the local Pierre insurance agency prohibited from rebidding the insurance coverage in 1991?

**IN RE QUESTION NO. 1:**

The answers to your questions are controlled by the South Dakota Constitution. Article III, 12 of the South Dakota Constitution states in relevant part:

[N]or shall any member of the Legislature during the term for which he shall have been elected, or within one year thereafter, be interested, directly or indirectly, in any contract with the state or any county thereof, authorized by any law passed during the term for which he shall have been elected.

The South Dakota Supreme Court has strictly interpreted Article III, 12. See, e.g., *Palmer v. State*, 11 S.D. 78, 75 N.W. 818 (1898); *Norbeck & Nicholson Co. v. State*, 32 S.D. 189, 142 N.W. 847 (1913); and *Norbeck & Co. v. State*, 33 S.D. 21, 144 N.W. 658 (1913).

This provision was most recently interpreted by the South Dakota Supreme Court in *Asphalt Surfacing v. South Dakota Department of Transportation*, 385 N.W.2d 115 (S.D. 1986). In *Asphalt Surfacing*, 385 N.W.2d at 118, the South Dakota Supreme Court stated:

Article III, section 12 specifically prohibits a contract with the State if 'authorized by any law' during the legislator's term. . . . Our constitutional framers obviously intended a broad prohibition. *Palmer*, 11 S.D. at 80-81, 75 N.W. at 819. This leaves little question that section 12 applies to a general appropriation bill as well as more specific legislative decisions. (Emphasis in original.)

Applying the above Supreme Court decisions, it is my opinion that the current insurance policy issued through the local Pierre insurance agency is valid and that the election of a partner of the insurance agency to the South Dakota Legislature does not affect the validity of the current contract. The constitutional prohibition is not applicable in this case since the legislative enactment that resulted in the contract was the general appropriations bill passed during the 1990 session. The partner of the insurance agency was not a legislator at that time. In addition, it is my opinion that the statutory conflict of interest provision of SDCL 5-23-14 also is not applicable, due to the fact that the partner was not a member of the Legislature and the insurance policy was competitively bid.

**IN RE QUESTION NO. 2:**

As noted above, the South Dakota Supreme Court has interpreted Article III, 12 as applying to a general appropriations bill. Under these circumstances, it is my opinion that if any new insurance policy is to be paid for by funds appropriated by the State Legislature during the 1991 legislative session, the local Pierre insurance agency cannot submit bids to the Legislative Research Council so long as the legislator remains a partner in the firm. The commissions received by the local insurance agency for any new insurance policy for the Legislative Research Council would be the type of interest specifically prohibited by Article III, 12 of the South Dakota Constitution. As a partner in the Pierre insurance agency, the new state legislator would receive a pecuniary benefit if the Pierre insurance agency were awarded the contract. As the South Dakota Supreme Court stated in *Asphalt Surfacing v. South Dakota Department of Transportation*, *supra*, the competitive bidding process does not satisfy the constitutional prohibition. A constitutional amendment was proposed to the voters in the 1990 general election to change this provision, but it was defeated. See 1989 S.D. Sess. Laws ch. 2, 2 (SJR 3).

Respectfully submitted,

ROGER A. TELLINGHUISEN  
ATTORNEY GENERAL

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