

OFFICIAL OPINION NO. 91-05, Use of Enhanced 911 Funds.

February 15, 1991

Mr. Ronald D. Buskerud  
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Pennington County  
300 Kansas City Street  
Rapid City, South Dakota 57701

**OFFICIAL OPINION NO. 91-05**

Use of enhanced 911 funds

Dear Mr. Buskerud:

You have asked for the official opinion of this office regarding the following factual situation:

**FACTS:**

The Pennington County board of commissioners has by ordinance authorized and implemented an E-911 reporting system for Pennington County. Pennington County is currently assessing and collecting a local uniform charge pursuant to the ordinance and SDCL 34-45-4. SDCL 34-45-12 provides that the funds collected from the charge imposed shall be credited to a special fund, and be used for payment of nonrecurring and recurring costs and for the general operational expense of the 911-related service.

Based upon this factual situation, you have asked whether the funds collected pursuant to the monthly E-911 uniform charge may be utilized to purchase radio consoles, vehicle radios, and to upgrade the communications systems for the law enforcement agencies which will be responsible for responding to the E-911 calls.

As you indicated, SDCL 34-45-12 sets forth the manner in which this special fund may be used:

Funds collected from the charge imposed pursuant to 34-45-3 am (sic) 34-45-4 shall be credited to a special fund, apart from the general fund of the public agency, for payments of nonrecurring and recurring costs and for the general operational expense of the 911 related

service, including but not limited to the personnel costs of the dispatchers or the monthly contract costs billed by the public safety answering point. If the 911 system is discontinued, any money remaining in the fund after all payments to the service supplier pursuant to this section have been made shall be transferred to the general fund of the public agency or proportionately to the general funds of each participating public agency.

Based on this statute, the fund may be used for (1) nonrecurring costs, (2) recurring costs, and (3) general operational expense.

It is my opinion that radio communications equipment falls into the first category, that of nonrecurring costs and thus the fund may be used for the purchase of radio equipment. SDCL 34-45-3(11) defines nonrecurring costs:

(11) "nonrecurring costs," any capital and start-up expenditure for telecommunications equipment, software, database, initial training and the purchase of lease of subscriber names, addresses and telephone information for the local exchange access company;

The items listed as nonrecurring costs in SDCL 34-45-1(11), include "telecommunications equipment." Radio communications equipment is, as described below, telecommunications equipment.

While telecommunications equipment is not defined in SDCL Title 34, chapter 45, it is described elsewhere in the South Dakota Codified Laws. Under SDCL 2-14-4, when the meaning of a word is defined in one South Dakota statute, the definition is applicable to the same word wherever it occurs "except where contrary intention plainly appears." In this case, there does not appear to be such a "contrary intention" contained within Title 34, chapter 45. Thus, definitions contained elsewhere in the South Dakota Code apply. SDCL 1-14-12.1 to SDCL 1-14-12.11 apply to the State Bureau of Administration's authority to develop, install, and direct telecommunications systems for state government.

SDCL 1-14-12.10(3) provides:

(3) "Telecommunications," any transmission, emission or reception of signals of any kind containing communications of any nature, by wire, radio, optical or other electromagnetic means, including all facilities, equipment, supplies and services for transmission, emission or reception. Telecommunications does not include data processing services provided or authorized by the bureau of administration or federal communication commission licensed

facilities under the control of the South Dakota board of educational television (emphasis added).

Under SDCL 1-14-12.10 (3) the definition of telecommunications includes radio transmissions, as well as radio equipment. It appears that under South Dakota law radio equipment is one type of telecommunications equipment.

SDCL title 49, chapter 31, which applies to the regulatory authority of the Public Utilities Commission, is also useful in this analysis.

SDCL 49-31-1(10) provides:

(10) "Telecommunications service," the transmission of signs, signals, writings, images, sounds, messages, data or other information of any nature by wire, radio, lightwaves, electromagnetic means or other similar means. It does not include the provision of terminal equipment used to originate or terminate such service, broadcast transmission by radio, television and satellite stations regulated by the federal communications commission and one-way cable television service (emphasis added).

Under this statute, radio transmission is one type of telecommunication service. It follows, then, that if radio transmission is one type of telecommunication service, then radio equipment would be a type of telecommunications equipment. The definitions contained in SDCL 49-31-1(1) and SDCL 1-14-12.10(3) establish that radio communications equipment would, indeed, be telecommunications equipment. Because radio communications equipment is telecommunications equipment, it meets the definition of nonrecurring costs set forth in SDCL 34-45-1(11).

Additionally, radio communications equipment might also be considered "general operational expense of the 911 related service" pursuant to SDCL 34-45-12. I have not examined this issue, having already advised you that radio communications equipment may properly be purchased from the special 911 fund.

While, as addressed above, radio equipment would properly be purchased from the 911 special fund, it should be remembered that the fund is designed to establish and maintain a 911 system and not to generally provide for the upgrade of radio communications equipment for law enforcement. In other words, the costs for radio communications equipment could be allocated between the special 911 fund and other county funding

sources depending on the extent that the radio communications services relate to the 911 reporting system. Allocating these expenses between different funds is a subjective determination that would depend, to some extent, upon the nature and use of the equipment being purchased.

Respectfully submitted,

MARK BARNETT  
ATTORNEY GENERAL

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