

OFFICIAL OPINION NO. 03-03, Lead/Deadwood School District No. 40-1

June 26, 2003

Lester Nies

Attorney at Law

P.O. Box 759

Spearfish, SD 57783-0759

OFFICIAL OPINION NO. 03-03

**Lead/Deadwood School District No. 40-1**

Dear Mr. Nies:

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

FACTS:

The Lead/Deadwood School District No. 40-1 (District) did not qualify for general state aid under the South Dakota School Aid formula under SDCL 13-13 (State aid) during its July 1, 2001, to June 30, 2002, fiscal year, nor did it qualify for State aid for the first half of fiscal year 2003 (July, 2002 to December, 2002). However, the District qualified for State aid for the second half of fiscal year 2003 (January, 2003 to June, 2003) in the amount of \$12,282. In January, 2003, the District received a disbursement of funds from the South Dakota Gaming Commission Fund under SDCL 42-7B-48.1(3) in the amount of \$51,683.14. Upon information provided to the District, these gaming funds were generated by the gaming establishments of Deadwood during the calendar year 2002. Also in January, 2003, the South Dakota Department of Education and Cultural Affairs notified the District that it would offset these 2002 gaming funds the District received against the second half of fiscal year 2003 school aid under SDCL 42-7B-48.2 because the gaming fund check was issued to the District in calendar year 2003. The District accounts for its funds on a modified accrual basis. SDCL 42-7B-48.2 is silent with regard to the year when gaming payments are deposited or the year when general state aid is received by the school district.

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

## QUESTIONS:

1. Does SDCL 42-7B-48.2 authorize the South Dakota Department of Education and Cultural Affairs to offset the gaming payment from the South Dakota Gaming Commission Fund earned during calendar year 2002 but paid to the District in calendar year 2003 against the District's fiscal year 2003 State aid, when the District was ineligible for State aid during the entire calendar year 2002?
2. What is the time period for which General State aid to schools under SDCL 13-13 should be offset against gaming payments from the South Dakota Gaming Commission?

## IN RE QUESTIONS:

SDCL 42-7B-48.2 provides as follows:

Notwithstanding any other provision of state law, payments received by a school district in accordance with subdivision 42-7B-48.1 (3), shall reduce on a dollar for dollar basis any general state aid otherwise payable to the school district.

In interpreting this or any other statute, the South Dakota Supreme Court has long applied certain rules of statutory construction. The purpose of statutory construction is to discover the true intention of the law which is to be ascertained primarily from the language expressed in the statute. The intent of a statute is determined from what the legislature said, rather than what the courts think it should have said, and the court must confine itself to the language used. Words and phrases in a statute must be given their plain meaning and effect. When the language in a statute is clear, certain, and unambiguous, there is no reason for construction, and the court's only function is to declare the meaning of the statute as expressed. State v. Cameron, 1999 S.D. 70, ¶ 17, 596 N.W.2d 49, 53 (citing Dahn v. Trowsell, 1998 S.D. 36, ¶ 14, 576 N.W.2d 535, 539 (also citing Moss v. Guttormson, 1996 S.D. 76, ¶ 10, 551 N.W.2d 14, 17)). Further, statutes must be construed according to their intent, the intent being determined from the statute as a whole, as well as enactments relating to the same subject. But in construing statutes together it is presumed that the legislature did not intend an absurd or unreasonable result. When the question is which of two enactments the legislature intended to apply to a particular situation, terms of a statute relating to a particular subject will prevail over the general terms of another statute. Id. (citing U.S. West Communications Inc. v. Public Utilities Commission, 505 N.W.2d 115, 122-23 (S.D. 1993)).

A particular illustration of the principle of avoiding an absurd result is State v. Davis, 1999 S.D. 98, ¶¶ 7-8, 598 N.W.2d 535, 537-38. In that case, the Court interpreted certain statutes in SDCL 32-23 in such a way that a fourth offense DUI would result whether the prior offenses came from South Dakota or from any other state. Id. Among other things, the Court noted that ambiguity is a condition of construction, and may exist where the literal meaning of a statute leads to an absurd or unreasonable conclusion.

Your request for an opinion centers mostly on accounting periods, and asks which year the Department of Education and Cultural Affairs should use to offset the gambling proceeds. SDCL 42-7B-48.1 requires that gambling proceeds be distributed to the school district after proceeds paid to the City of Deadwood equal \$6,800,000 for each year, after payment of expenses of the gaming commission, and after the payment of \$100,000 to the State Historical Preservation Grant and Loan Fund. It will be noted that SDCL 42-7B-48.1 requires that proceeds be distributed on a yearly basis. This has been done in accordance with a calendar year. Moreover, SDCL 42-7B-48.2 requires reduction on a dollar-for-dollar basis of general state aid otherwise payable to the District when payments are made of the gambling proceeds.

While SDCL 42-7B-48.1 calls for proceeds to be divided on a yearly basis, SDCL 42-7B-48.2 does not restrict the time period in which State aid can be reduced on a dollar-for-dollar basis. It says only that when the District receives any funds from the gambling proceeds, those funds shall reduce on a dollar-for-dollar basis any general State aid otherwise payable to the District. The legislature did not state that the State aid otherwise payable to the District during the school fiscal year, or during the calendar year, should be reduced. Rather, any general State aid otherwise payable to the school district shall be reduced on a dollar-for-dollar basis. Any State aid includes State aid payable in any fiscal year, in accordance with the plain words of the statute. It would have been quite simple to add the phrase "during the fiscal in which the payments are received" or "during the calendar year in which the payments are received." Since the legislature did not choose to limit the statute in this fashion, the District's general State aid may be reduced until such time as the gambling revenues have been completely offset. This is the clear, literal meaning of the statute.

This is not an absurd or unreasonable result. Unlike the situation in Davis, there is no time where other districts would be treated differently, nor is there a situation where the geographic location of the District or its patrons would be determinative of how this statute

is applied. Rather, the statute tends to equalize the State aid or dollars available to this District as opposed to districts outside Lawrence County. The legislature apparently believed that while certain gambling moneys should go to Lawrence County School Districts, the districts should not be given a windfall of gambling moneys plus continued State aid. Offsetting the moneys in the fashion set forth in this Opinion will provide additional State aid to other school districts that do not get gambling revenues. At the same time, the District will continue to receive the gambling moneys, even if it is ineligible for State aid. If the legislature had intended that the state aid offset by gambling revenues would nonetheless go to the District if it could not be offset by state aid in the current fiscal or calendar year, it would have said so. Likewise, if this was the intent, the matter can be addressed at the next legislative session.

Therefore, the answer to your first question is "yes," and the answer to your second question is that general state aid to schools may be offset by gambling proceeds, even if the gambling proceeds and state aid are received in different fiscal or calendar years.

Respectfully submitted,

LAWRENCE E. LONG  
ATTORNEY GENERAL

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