

OFFICIAL OPINION NO. 72-47, Does Chapter 136, Laws 1972 (SDCL 5-2-18) comply with the Federal Uniform Relocation Assistance Act, Public Law 91-646?

STATE OF SOUTH DAKOTA
OFFICE OF
THE ATTORNEY GENERAL

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Does Chapter 136, Laws 1972 (SDCL 5-2-18) comply with the Federal Uniform Relocation Assistance Act, Public Law 91-646?

Dear Mr. Hanson:

You have asked my opinion on the following situation:

Congress enacted Public Law 91-646 entitled the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

In 1972 the Legislature enacted Chapter 136, Laws 1972 to comply with the provisions of Public Law 91-646.

Does Chapter 136, Laws 1972, comply with the Federal statute?

Public Law 91-646 may be found at 42 U.S.C. 4601, et seq. It generally provides for relocation assistance and allows payments to the states who meet: with the provisions of the Act in their own relocation policies.

Chapter 136, Laws 1972, may be found at SDCL 5-2-18 reading as follows:

Notwithstanding any other law, the state of South Dakota, its departments, agencies, instrumentalities or any political subdivisions are authorized to provide relocation benefits and assistance to persons, businesses, and farm operations displaced as the result of the acquisition of land or rehabilitation or demolition of structures in connection with federally-assisted projects to the same extent and for the same purposes as provided for in the

Uniform Relocation Assistance and Real Property Acquisition policies Act of 1970 (P.L. 91-646), and to comply with all the acquisition policies contained in said federal act.

The South Dakota Act grants broad authority to the State and its political subdivisions to comply with the Federal Act. Such delegation is not prescribed by Article III, Section 26 of the South Dakota Constitution since the governmental divisions mentioned in SDCL 5-2-18 are not among those prohibited by the Constitution from receiving certain authority. Neither are the acts delegated by SDCL 5-2-18 prohibited by the Constitution.

It is well settled that the Legislature can delegate acts if standards are established within which the delegation can operate.

State ex rel Oster v. Jorgenson, 81 S.D. 447, 136 N.W. 2d 870 (1965). See also *In re Oahe Conservancy Subdistrict*, 85 S.D. 443, 185 N.W. 2d 682 (1971).

The standards that are to be followed are provided by the provisions of the Federal Act, and in order for the state of South Dakota to receive assistance under the Federal Act, those standards must be followed. SDCL 5-2-18 is not mandatory upon the political subdivisions and if they do not want funds under the Federal Act, they need not follow its acquisition policies. Therefore, it is my opinion that no unlawful delegation is granted to the Federal Government. Furthermore, the Federal Act is paramount under the supremacy clause of the United States Constitution and over-rides state law in this area. See Official Opinion No. 71-24.

The Legislature has provided guidelines under which all administrative agencies within the state must operate, and that is the Administrative Procedures Act, SDCL 1-26. Since the Legislature has delegated authority pursuant to the standards of the Federal Act, the various agencies in the state government may adopt rules pursuant to SDCL 1-26 to comply with the provisions of the Federal Act, if necessary. Negotiation and other available tools may be utilized.

In conclusion, it is my opinion that the Legislature intended to grant power to meet the provisions of Public Law 91-646, and that SDCL 5-2-18 meets these provisions.

Respectfully submitted,

Gordon Mydland
Attorney General