

OFFICIAL OPINION NO. 77-95, P. L. 94-565, payments to local governments for entitlement lands

November 7, 1977

Mr. Charles P. Schroyer  
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Pierre, South Dakota 57501

Official Opinion No. 77-95

**P. L. 94-565, payments to local governments for entitlement lands**

Dear Mr. Schroyer:

You have requested an opinion based on the following factual situation:

FACTS:

Public Law 94-565, codified at 31 USC § § 1601-1606, authorizes certain payments to local units of government in which "entitlement lands" are located. By definition "entitlement lands" include national forests and grasslands, Bureau of Land Management lands, national park system lands, wilderness areas, Army Corps of Engineer projects, and Bureau of Reclamation lands. Payments are made directly to the eligible units of local government, which in South Dakota are the counties and are to be used for purposes designated by the federal law and federal regulations. Hughes County and several other counties have recently received the first payment pursuant to this federal law. County auditors have raised several questions regarding the distribution and use of the funds, particularly in view of the provisions of SDCL 4-3-17 and 4-3-18.

Based on the above factual situation, you have asked the following questions:

QUESTIONS:

1. Who is authorized to receive the payments distributed pursuant to P. L. 94-565?

2. How are the payments received by the unit of local government to be distributed?

IN RE QUESTIONS NO. 1 AND 2:

The payments pursuant to P. L. 94-565 take one or both of the following forms: (1) 31 U.S.C. § 1601 provides that after October 1, 1976, annual payments are to be made to the unit of local government in which entitlement lands are located. Such payments may be used by the local government for "any governmental purpose." (2) 31 U.S.C. § 1603 authorizes an additional payment to a unit of local government from which the federal government acquired lands for addition to the national park system or national forest wilderness areas after December 31, 1970. These additional payments are to be distributed on a proportional basis to all units of local government and affected school districts which have incurred losses of real property taxes due to the federal acquisition. This becomes a direct payment in lieu of taxes.

"Unit of local government" is defined as a unit of general government which is the principal provider of governmental services affecting the use of entitlement lands. Ordinarily, a unit of general government will be a county. Department of Interior Regulation, § 1881.0-5(b)(1). The regulations further exclude single purpose or special purpose units of government such as school districts. § 1881.0-5(b)(2).

Therefore, the federal act and regulations adopted pursuant thereto quite clearly establish the purpose for the payments, the recipients thereof and the method of distribution. However, the questions you have asked relate to the application of SDCL 4-3-17, *et seq.*, to the federal program. [SDCL 4-3-17](#) and 4-3-18 provide:

4-3-17. The state treasurer is authorized and directed to receive from the federal government or any agency thereof any federal funds which may be made available to any of the taxing subdivisions of this state as rentals upon or income from any lands acquired in this state by the federal government or any of its agencies, or any funds which may be paid in lieu of taxes on said land.

4-3-18. Upon the receipt of any of the funds referred to in § 4-3-17 the state treasurer shall remit the same to the county treasurer of the county wherein is situated the land on behalf of which such payment is made, and the county treasurer shall then distribute such funds to

the credit of the taxing subdivision or subdivisions of the county in the same proportion as the tax upon such lands would be distributed under the laws of this state for the current year in which such payment or payments are made.

SDCL 4-3-19 makes the misappropriation or misuse of such funds by the public officer receiving them a felony.

In my opinion, the provisions of SDCL 4-3-17, *et seq.*, are not applicable to the payments provided by P. L. 94-565.

SDCL 4-3-17 is enabling legislation which authorizes the receipt by the State of South Dakota of certain monies derived from federally owned lands. This provision also implies that said monies, by the terms of the federal legislation appropriating the same, may be distributed to local units of government. By contrast, P. L. 94-565 provides for payments directly to defined units of local government. The state does not become a party to the transaction, nor is it given the discretion to determine if the monies are, in fact, to be distributed to local governments or placed in the state treasury for state purposes.

This is also the position taken by the Acting Solicitor General, U.S. Department of the Interior, in a letter opinion dated on or about March 1, 1977, to Congressman James Abdnor. The Acting Solicitor therein stated:

Regardless of the method of apportionment chosen by a state legislature, this Department would continue to make direct payments pursuant to Section 1 of the Act only to county or county-type governments. The mechanism for any apportionment of monies would have to be supplied to the state or county governments.

The application of SDCL 4-3-17 can be illustrated by reference to AGR 71- 5. That opinion dealt with the federal Mineral Leasing Act (30 U.S.C. § 191), which appropriated to the states certain rentals and royalties from federally owned lands. The states then had the option to use the monies for state purposes (i.e., road construction and maintenance), or distribute them to school districts as the state legislature directed. My predecessor held that SDCL 4-3-17, *et seq.*, were applicable both as to the receipt and distribution of the funds. I agree with that conclusion. If the federal legislation appropriates funds to the state and gives the state several options for its distribution, including remittance to local units of government, it is my opinion that SDCL 4-3-17, *et seq.*, are applicable.

However, in the absence of such federal legislation or specific state legislation establishing terms and conditions for the direct receipt of federal funds by local units of government, it is my opinion that said local units may directly receive the entitlement payments from the federal government, as well as disburse and expend them for any purpose authorized by the federal act and regulations.

Respectfully submitted,

William J. Janklow  
Attorney General

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