



OFFICE OF ATTORNEY GENERAL

1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501
Phone (605) 773-3215
Fax (605) 773-4106
TTY (605) 773-6585
<http://atg.sd.gov/>

MARTY J. JACKLEY
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

November 27, 2018

Gregg A. Gass
Kingsbury County State's Attorney
P.O. Box 35
De Smet, SD 57231

Official Opinion No. 18-03

Re: County Commission's Role in the Division of a Township

Dear Mr. Gass,

In your capacity as State's Attorney for Kingsbury County, you have requested an official opinion from the Attorney General's Office based on the following questions:

QUESTIONS:

1. What statutory role does a county commission have regarding the division of an organized township?
2. Does SDCL 8-1-2 allow a county to adjust the boundaries of the newly created townships arising from the division of a previous township?

ANSWERS:

1. A review of the statutory scheme in SDCL ch. 8-1 reveals that a county commission has a limited role in the division of an organized township.
2. No, SDCL 8-1-10 implies that the proposal to divide a township is what fixes and determines the boundaries of any township existing post division.

FACTS:

Matthews Township is an organized civil township located within Kingsbury County, South Dakota. The Board of Supervisors for Matthews Township has requested that the township be split into two separate townships. A question has arisen as to what statutory role the Kingsbury County Commission is to play in the division of the township. Further, you have specifically asked whether the County Commission has the statutory authority to determine or adjust the boundaries of the newly created townships.

IN RE QUESTION 1:

You have asked what statutory role a county commission has in the division of an organized civil township.

“A county is a creature of statute and has ‘only such powers as are expressly conferred upon it by statute and such as may be reasonably implied from those expressly granted.’” *Tibbs v. Moody County Board of Commissioners*, 2014 S.D. 44, ¶ 25, 851 N.W.2d 208, 217, (quoting *State v. Quinn*, 2001 S.D. 25, ¶ 10, 623 N.W.2d 36, 38) (internal citations omitted).

SDCL 8-1-2 states that:

[t]he board of county commissioners shall continue to divide the county into as many civil townships as the conveniences of the citizens may require, and shall accurately define the boundaries thereof, and may from time to time make such alterations in the number, names, and boundaries thereof as it may deem proper, by advice of the people as provided for in this chapter.

SDCL 8-1-8 establishes that a civil township may be “reorganized, divided, or merged with another township..., subject to approval by the voters in the affected [township]...,” only if one of the following conditions is met: the county commission proposes that the township be divided, reorganized or merged; the township board proposes to the county commission that the township be divided, etc.; or a majority of the registered voters in the township petition the county commission for division of the township, or reorganization, or merger. If one of the conditions of SDCL 8-1-8 is met, the county commission is required to hold a public hearing on the proposal, and the commission is required to timely publish notice of this hearing. SDCL 8-1-9. After the required public hearing is held, the proposal is determined by the voters of the affected township “at the next regular township election.” SDCL 8-1-10. If no votes are cast by a resident of an affected portion of a township, then the

county commission “shall determine the status of the affected portion for purposes of deciding the results of the election in the affected portion.” *Id.*

When interpreting statutes, the state Supreme Court has explained:

[W]e begin with the plain language and structure of the statute. 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 clearly expressed. When we must, however, resort to statutory construction, the intent of the legislature is derived from the plain, ordinary and popular meaning of the statutory language.

In re Wintersteen Revocable Trust Agreement, 2018 S.D. 12, ¶ 12, 907 N.W.2d 785, 789 (citations omitted). The purpose of statutory construction is to discover a statute’s true intent primarily through an analysis of its language. *In re Estate of Ricard*, 2014 S.D. 54, ¶ 8, 851 N.W.2d 753, 755-56. The intent of a statute “must be determined from the statute as a whole, as well as enactments relating to the same subject.” *In re Taliaferro*, 2014 S.D. 82, ¶ 6, 856 N.W.2d 805, 806-07.

In reading SDCL 8-1-2 together with the provisions of SDCL 8-1-8 through 8-1-10, I conclude that a county commission does have a limited role in the division of an organized township.

SDCL 8-1-2 directs a county commission to “divide the county into as many civil townships as the conveniences of the citizens may require.” This directive, however, is qualified by the requirement that the county commission must follow “the advice of the people as provided for in [SDCL ch. 8-1].” Under SDCL ch. 8-1, the county commission holds at best a supervisory role in the division of a township. Other than potentially proposing the division of a township (SDCL 8-1-8), a county commission’s role is limited to holding a public hearing on the division question (SDCL 8-1-9), and to determining the division question only for those portions of an affected township where no resident votes (SDCL 8-1-10). The statutes in SDCL ch. 8-1 clearly require the division of a township to ultimately be determined by an election of a majority of the voters of the affected township. SDCL 8-1-8 & 8-1-10.

The legislative history of SDCL ch. 8-1 supports the conclusion reached above. In 1996, the Legislature enacted the current version of SDCL 8-1-8. 1996 SL ch. 58, § 3. Prior to that amendment the terms of the statute gave a county commission the authority to join or divide townships upon petition by a majority of the voters within the township if the commission felt the division

was in the “best interests of the township....” *Id.* In amending the statute, the Legislature left the county commission only with the authority to propose the division of a township. SDCL 8-1-8. SDCL 8-1-10 was also amended by the Legislature in 1996. 1996 SL ch. 58, § 5. The prior version of SDCL 8-1-10 gave a county commission the authority to divide a township if it was “in accordance with the wishes of a majority of legal voters” and the commission felt that the “interests of such township would be served thereby.” *Id.* Currently, the statute rests the decision on the division of a township entirely in the hands of the affected voters (unless no vote is cast in an affected portion of a township). SDCL 8-1-10.

When the Legislature amends a statute, it is presumed that the meaning of the statute must change to comport with the new terms. *Lewis & Clark Rural Water System, Inc. v. Seeba*, 2006 S.D. 7, ¶ 17, 709 N.W.2d 824, 831; *Rosander v. Board of County Commissioners of Butte County*, 336 N.W.2d 160, 161 (S.D. 1983). Here, the amendments to SDCL 8-1-8 and 8-1-10 clearly reflect the Legislature’s intent to limit the role of a county commission in the division of a civil township.

Based on a review of the relevant statutes in SDCL ch. 8-1, a county commission’s role in a proposed township division is generally to hold a hearing and to ensure the voters of the affected civil townships are notified. A county commission may propose a division, but the voters make the ultimate decision on the matter.

IN RE QUESTION 2:

You have also asked whether SDCL 8-1-2 gives the Kingsbury County Commission the authority to determine or adjust the boundaries of the newly created townships should the division of Mathews township be approved.

The rules of statutory construction require me to give effect to the “clear, certain, and unambiguous” intent of a statute through an analysis of the “plain, ordinary and popular” meaning of a statute’s language. *Wintersteen Revocable Trust*, 2018 S.D. 12, ¶ 12. The rules of construction also require me to determine a statute’s intent after a review of statutes related to the same subject. *Taliaferro*, 2014 S.D. 82, ¶ 6

The language of SDCL 8-1-2 conditions a county commission’s authority to define township boundaries on the “advice of the people as provided for in [SDCL ch. 8-1]”. SDCL 8-1-4 requires that a description of the boundaries of a new township, or any alteration to the boundaries of an existing township, must be recorded “in the records of the board of county commissioners.” No other state constitution or statutory provision specifies the procedure for defining a township’s boundaries.

The prior version of SDCL 8-1-10 allowed a county commission to “fix and determine the boundaries of a civil township” resulting from the division of a township. 1996 SL ch. 58, § 5. As mentioned above, the Legislature amended this statute in 1996. *Id.* In amending the statute, the Legislature removed the language that empowered a county commission to determine the boundaries of a township. *Id.* By operation of the amendment to SDCL 8-1-10, I must presume the Legislature intended to remove a county commission’s authority to define the boundaries of a divided township. *Lewis & Clark Rural Water System*, 2006 S.D. 7, ¶ 1.

SDCL 8-1-10 currently requires that if a majority of votes cast “are in favor of the proposed reorganization, division, or merger, the *proposal* shall be implemented ...” (emphasis added). I believe SDCL 8-1-10 implies that the proposal submitted to the voters is what fixes and determines the boundaries of a divided township. If the proposal is approved, the boundaries as indicated in the proposal are implemented and recorded in the records of the county commission as required by SDCL 8-1-4.

The above conclusion seems to be the most logical interpretation of the relevant statutes. By requiring the proposal to fix and determine the boundaries of any divided township, the affected voters are provided all necessary information to make an informed choice on the division question. Certainly, where the boundary lines of the newly created townships are to be fixed may influence how an individual voter might feel about the proposed township division. Requiring the proposal to determine where the boundary lines are to be fixed post-election allows a fully informed electorate to give their advice on the proposal as required by SDCL 8-1-2.

I conclude that SDCL 8-1-10 requires by implication that the proposal to divide a township must determine where the boundary lines are to be fixed after any township division. This conclusion harmonizes the language in SDCL 8-1-2 directing a county commission to accurately define the boundaries of a civil township with the qualification that any such action must be carried out by the “advice of the people as provided for in [SDCL ch. 8-1],” and it accounts for the legislative history of SDCL 8-1-10. If counties and townships desire more specific statutory direction on this question they must ask the Legislature for those specifics.

CONCLUSION

It is my opinion that a county commission plays a limited role in the division of a township. A county commission may propose such a division, but beyond that its role is generally to hold a hearing on the proposal and to ensure the voters of the affected civil townships are notified. Further, SDCL 8-1-2 does

not authorize a county commission to fix and determine the boundaries of a township formed by a township division. SDCL 8-1-10 requires by implication that the proposal to divide a township must fix the boundaries of any township that will exist subsequent to the division.

Sincerely,

A handwritten signature in black ink that reads "Marty J. Jackley". The signature is written in a cursive, flowing style.

Marty J. Jackley
ATTORNEY GENERAL

MJJ/SRB/lde