

STATE OF SOUTH DAKOTA



OFFICE OF ATTORNEY GENERAL

1302 East SD Highway 1889, Suite 1

Pierre, South Dakota 57501-8501

Phone (605) 773-3215

Fax (605) 773-4106

<http://atg.sd.gov>

MARTY J. JACKLEY
ATTORNEY GENERAL

BRENT K. KEMPEMA
CHIEF DEPUTY

January 28, 2026

City of Spearfish
City Attorney David P. Knox
625 N. 5th Street
Spearfish, SD 57783

OFFICIAL OPINION 26-02

Re: Official Opinion Concerning City Ordinance 32.08

Dear Mr. Knox:

In your capacity as City Attorney for the City of Spearfish, you have requested an official opinion from the Attorney General's Office on the following questions:

QUESTION(S):

1. Does Spearfish City Ordinance 32.08 conflict with state statutes and does state law thus control? ¹
2. Does the Spearfish City Council have the authority to terminate the City Administrator, or is that authority reserved for the mayor?

ANSWER(S):

1. Yes, Ordinance 32.08 conflicts with state statutes and state law controls.
2. No, the Spearfish City Council cannot terminate the City Administrator; that authority is vested in the mayor.

¹ Your request for an official opinion also asked if City Ordinance 32.08 is "illegal." Because the ordinance has already been enacted, the Attorney General's Office finds this question is encompassed in your second question, so the two are combined for brevity and clarity.

FACTS:

The City of Spearfish is a first-class municipality. It has an aldermanic form of government under SDCL Chapter 9-8. Accordingly, the city council is made up of a mayor and six aldermen who represent the three electoral wards of the city. The city employs a City Administrator as an officer of the city.

The majority of the aldermen on the Spearfish City Council believe the City Administrator is unable to fulfill the duties and obligations of the position. City Ordinance 32.08 states, in relevant part, that “[t]he Common Council may appoint a City Administrator,” but “the City Administrator, as an officer of the city, may be removed by the mayor.”

The majority of the aldermen comprising the Spearfish City Council have asked the mayor to terminate the employment of the City Administrator. The mayor has not done so. You ask whether the aldermen have the authority “to act as a body and terminate the City Administrator without the involvement or participation of the mayor.”

IN RE QUESTION 1:

You have asked whether City Ordinance 32.08 conflicts with state statutes to such a degree that the state statutes control over the ordinance. It does conflict with state statutes, but not because it grants the mayor the ability to terminate the City Administrator’s employment. Rather, it conflicts with state statutes by giving the city council the power to appoint the City Administrator.

When interpreting statutes, “the language expressed in the statute is the paramount consideration.” *Olson v. Butte County Comm’n*, 2019 S.D. 13, ¶ 5, 925 N.W.2d 463, 464 (quoting *Goetz v. State*, 2001 S.D. 138, ¶ 15, 636 N.W.2d 675, 681). “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.” *State v. Biteler*, 2025 S.D. 73, ¶ 13, ___ N.W.3d ___ (quoting *State v. Armstrong*, 2020 S.D. 6, ¶ 16, 939 N.W.2d 9, 13).

In municipalities governed by a mayor and common council under SDCL Chapter 9-8, the appointment of officers follows a specific statutory scheme. SDCL 9-14-3 provides that “each appointive officer of a municipality governed by a mayor and common council *shall be appointed by the mayor* with the approval of the council . . .” SDCL 9-14-3 (emphasis added). This statute establishes the *mayor* as the appointing authority, with the council exercising

an approval function rather than independent appointment power. Spearfish City Ordinance 32.08 allows the city council to appoint a City Administrator, but this conflicts directly with SDCL 9-14-3.

The South Dakota Supreme Court has consistently recognized this framework, noting that the aldermanic form contemplates the mayor as the chief executive officer with appointment powers subject to council approval. SDCL 9-8-1.

“Where a grant of power appears to be delimited by statute, [the Supreme Court] will strictly resolve against a municipality power taken in excess of that grant.” *Patterson v. Linn*, 2001 S.D. 135, ¶ 7, 636 N.W.2d 467, 469 (citing *Sioux Falls v. Peterson*, 71 S.D. 446, 448, 25 N.W.2d 556, 557 (1946)).

Spearfish City Ordinance 32.08 grants power to the city council in excess of that granted under state law.

“When an ordinance conflicts with state law, ‘state law preempts or abrogates the conflicting local law.’” *Preserve French Creek, Inc. v. County of Custer*, 2024 S.D. 45, ¶ 10, 10 N.W.3d 233, 238 (quoting *Rantapaa v. Black Hills Chair Lift Co.*, 2001 S.D. 111, ¶ 23, 633 N.W.2d 196, 203). When an ordinance prohibits what state law allows, the ordinance is unenforceable. *Id.*

Thus, Spearfish City Ordinance 32.08 is preempted by state law in that it says the city council may appoint a City Administrator, when state law says a city officer must be appointed by the mayor. As discussed below, Ordinance 32.08 appropriately vests the power to remove the City Administrator with the mayor.

IN RE QUESTION 2:

Turning to the ability to terminate city officers, the removal authority for officers in aldermanic-governed municipalities is similarly clearly vested in the mayor. SDCL 9-14-13 expressly states, “[i]n an aldermanic-governed municipality, the mayor, except as otherwise provided, may remove from office any officer appointed by the mayor, if the mayor believes that the interests of the municipality demand such removal.” SDCL 9-14-13.

Similar to appointment powers, the South Dakota Supreme Court has repeatedly held that the mayor is vested with the power to remove a city officer.

“SDCL 9-14-13 is an executive power vesting in the mayor the power of removal of any officer appointed by him. This power is absolute.” *Kierstead v. City of Rapid City*, 248 N.W.2d 363, 366 (S.D. 1976) (citing *State v. Williams*, 6 S.D. 119, 60 N.W. 410 (1894)). “Interpreting SDCL 9-14-13 [otherwise] would entitle a common council effectively to annul the Legislature’s express grant of removal power . . .” *Patterson*, 2001 S.D. 135, ¶ 10, 636 N.W.2d at 470. “A

contrary reading of this statute leads to the inconsonant result that a city can override the powers conferred upon it by the Legislature.” *Id.* ¶ 11.

Accordingly, the Spearfish City Council cannot “act as a body and terminate the City Administrator without the involvement or participation of the Mayor.” City Ordinance 32.08 appropriately vests the power to remove the City Administrator with the mayor, in line with SDCL 9-14-13.

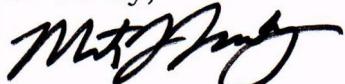
As it is currently written, Spearfish City Ordinance 32.08 appears to conflate the aldermanic form of city government with the aldermanic form with a city manager. Under SDCL Chapter 9-10, municipalities may employ a city manager who has the duty to supervise the administration of all affairs of the municipality, among other duties. SDCL 9-10-15. In that form of government, the city manager is appointed and removed by the governing body, not the mayor. SDCL 9-10-3 and -11. Even so, a city manager is not the equivalent of Spearfish’s City Administrator; the former requires a change of the city’s form of government and an election by the registered voters of the municipality. SDCL 9-10-1.

In summary, because SDCL 9-14-13 vests removal authority in the mayor for officers appointed by the mayor in aldermanic-governed municipalities, and because municipal ordinances cannot expand or restrict statutory removal powers, the City Administrator is necessarily subject to removal by the mayor alone.

CONCLUSION

In municipalities governed by a mayor and common council under SDCL Chapter 9-8, the authority to both appoint and remove city officers is vested in the mayor. Thus, City Ordinance 32.08 is preempted by SDCL 9-14-3 as to the ability to appoint a City Administrator. City Ordinance 32.08 correctly sets out that only the mayor may terminate the City Administrator’s employment. The authority to make any desired change in the relevant state statutes is vested in the Legislature.

Sincerely,



Marty J. Jackley
ATTORNEY GENERAL

MJJ/SLT/dd