

Marty J. Jackley
ATTORNEY GENERAL



Mark W. Barnett
CHIEF DEPUTY

Office of the Attorney General
STATE OF SOUTH DAKOTA

July 26, 2023

Honorable Kristi Noem
Governor, State of South Dakota
500 E Capitol
Pierre, S.D. 57501

Re: Senator Castleberry and Article III, Section 12

Dear Governor Noem:

Thank you for your correspondence of July 25, 2023, requesting our Office to investigate payments from the Division of Economic Assistance to State Senator Jessica Castleberry.

The payments appear to be made under contract with a business wholly owned by Senator Castleberry, 'Little Nest Preschool, LLC'. These payments were derived from the federal covid relief funds. Senator Castleberry's Statement of Financial Interest confirms she is the owner of that business.

As you are aware, in 2020 you requested the advice of the South Dakota Supreme Court on whether legislators could receive such funds. You asked "(a)ssuming all other criteria is met to qualify, **does the South Dakota Constitution or any state law prohibit a current state legislator from being eligible to receive funds from a CRF (Covid Relief fund) Grant Program?**"

The Court's response may be found at *In re Noem*, 950 N.W.2d 678, 2020 S.D. 58 (S.D. 2020). The Court stated that the answer to your question was "YES." **Such payments to legislators are strictly prohibited.**

The Court cited Article III Section 12 in part, stating "*nor shall any member of the Legislature during the term for which he (sic) shall have been elected, or within one year thereafter, be interested, **directly or indirectly**, in any contract with the state...*" (Court's emphasis.)

Honorable Kristi Noem
July 26, 2023
Page 2 of 2

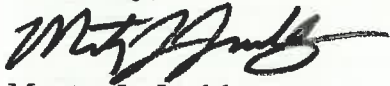
The Court opined as follows:

This Court strictly interprets the language of South Dakota Article III, Section 12.... Its prohibitions are broad in scope and extend to any contract between a legislator and the State, including the General Appropriations Bill.... When Article III Section 12 is violated, the contract is wholly illegal, void, and against public policy, and cannot be enforced in whole or in part on any theory of any kind.

Senator Castleberry's payments are, in the opinion of this office, in violation of Art. III Section 12. I have accordingly provided Senator Castleberry the accompanying demand letter.

Under the facts you have set forth, it is my further advice that any and all such payments be stopped immediately. I appreciate your referral of this matter to our Office, and your continued cooperation.

Sincerely,



Marty J. Jackley
ATTORNEY GENERAL

MJJ/dd