

SD ASSOCIATION OF COUNTY HIGHWAY SUPERINTENDENTS

Certification Manual



County Officer and Employee Liability, Benefits and Restrictions

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Purposes and limitations of the Manual

This manual was updated in the summer of 2024 at the direction of the South Dakota Association of County Highway Superintendents as a resource for county highway superintendents. This Manual is not all encompassing but is instead presented as a general outline of state statutes governing the operation of county highway departments. This manual does not include every statute and court opinion related to county highways and does not constitute legal advice. Further, laws, and the courts' interpretation of such laws, often change. If you are confronted with a particular issue, contact your state's attorney to research how the latest law applies to such issue.

Liability of the County and the County Board

The question of the liability of a county and its governing body acting as an agent of the state has been the subject of extensive litigation, and the South Dakota Supreme Court has laid down rules which give some degree of clarity to the subject. The county board is not liable for damages in the performance of governmental functions caused by neglect to perform such duties consisting of acts of omission only, unless such cause of action is expressly given by statute (*Plumbing Supply Co. v. Board of Education* 32 SD 270, 142 NW 1131 (1913)).

In another case the court reaffirmed this general rule when it states that no action lies against a county to recover for negligence of its officers, agents or employees in absence of a statute imposing such liability (*Arms v. K]* County, 69 SD 164, 7 NW 2d 722 (1943)).

Counties are quasi-corporations created for governmental purposes and as such are a part of the state. They are liable for damages only expressly given by statute and are immune from any liability or action under the common law. (AGR 1953-54, pp. 288-289)

Establishment of a Liability Insurance Pool and Insurance

The 1986 state legislature established a public entity pool for liability insurance for counties and all other governmental entities. Statutes involved are in SDCL 3-22-1 and 2 (partial). Sovereign immunity and insurance can be found in SDCL 7-18-8 and 21-32A.1.

3-22-1. Public entity pool for liability established--Coverage provided--Effect on certain claims and defenses. There is hereby established the South Dakota public entity pool for liability effective March 1, 1987. PEPL shall provide defense and liability coverage for any state entity or employee as provided for within the coverage document issued by PEPL. Nothing in this chapter may be construed to require payment of a particular claim or class of claims, to create any cause of action, nor to waive or limit any immunity or legal defense otherwise available to any covered claim. Punitive damages may not be recovered pursuant to this chapter. No claim for indemnity or contribution by the United States, arising directly or indirectly from the acts or omissions of the South Dakota National Guard, its agents, officers, members, or employees, which is cognizable under the Federal Tort Claims Act may be prosecuted under this chapter.

Source: SL 1986, ch 413, § 1; SL 1993, ch 46; SL 2010, ch 24, § 1.

** Please note this statute has been reviewed and interpreted by South Dakota courts and South Dakota Attorney General. The following are citations to decisions and South Dakota Attorney General Opinions available at the time this manual was created (in no particular order):

- *Kahle v. Leonard*, 2010 U.S. Dist. LEXIS 13752 (Feb. 17, 2010).
- *Truman v. Griese*, 2009 SD 8, 762 N.W.2d 75, 2009 S.D. LEXIS 10 (Feb. 11, 2009).
- *Entity Pool for Liab. v. Winger*, 1997 SD 77, 566 N.W.2d 125, 1997 S.D. LEXIS 77 (July 2, 1997).
- Op. Atty Gen. S.D. 104.
- Op. Atty Gen. S.D. 143.

In reviewing the cited authorities, it is encouraged that you discuss the matter with your state's attorney and also determine whether any other guidance has been issued.

- 3-22-2. Terms defined.** Terms used in this chapter mean:
- (1) "PEPL," the public entity pool for liability established pursuant to this chapter;
 - (2) "Bureau," the Bureau of Human Resources and Administration;

- (3) "Covered claim," a claim or civil action arising in tort from the operation of a motor vehicle, a ministerial act, or another act for which coverage is provided under the PEPL coverage document;
- (4) "Coverage document," the written agreement between the director and the Governor setting forth the terms, conditions, limits, and scope of coverage provided by PEPL for a covered claim;
- (5) "Director," the director of PEPL appointed by the commissioner of human resources and administration pursuant to this chapter;
- (6) "Employee," any permanent or temporary employee or elected or appointed officer of any state entity whether compensated or not
- (7) "Fund," the public entity pool for liability fund established pursuant to this chapter; and
- (8) "State entity," the State of South Dakota and all of its branches, agencies, boards and commissions.

Source: *SL 1986, ch 413, § 2; SL 1987, ch 40, § 1; [SL 1995, ch 323 \(Ex. Ord. 95-7\), §§ 17, 18; SL 2010, ch 24, § 2; SL 2024, ch 1 \(Ex. Ord. 24-1\), § 34, eff. Apr. 8, 2024.](#)*

** Please note this statute has been reviewed and interpreted by South Dakota courts and South Dakota Attorney General. The following are citations to decisions and South Dakota Attorney General Opinions available at the time this manual was created (in no particular order):

- *Aune v. B-Y Water Dist.*, 1990, 464 N.W.2d 1.
- Op. Atty. Gen. Opinion No. 87-37, [1987 WL 341034](#)
- *South Dakota Pub. Entity Pool for Liab. v. Winger*, 1997 SD 77, 566 N.W.2d 125, (July 2, 1997).
- Opinion No. 87-37; 1987-1988 Op. Atty Gen. S.D. 104.

In reviewing the cited authorities, it is encouraged that you discuss the matter with your state's attorney and also determine whether any other guidance has been issued.

7-18-8. Liability insurance and agreements obtained for county – Protection for officers and employees. Any board of county commissioners may obtain and pay for all forms of liability insurance, or in lieu thereof, make other arrangements, including entering into agreements with others, which agreements may create separate legal or administrative entities pursuant to chapter 1-24, to protect and assist the county in meeting obligations arising from such acts or omissions for which the county may be legally liable. The liability insurance coverage or other arrangement obtained shall protect the county officers and employees in the performance of official duties and against acts committed by them that could be reasonably considered to be within the scope of their official duties.

Source: *SL 1949, ch 28; SDC Supp 1960, § 12.1810; SL 1975, ch 80; 1978, ch 50, § 1; 1987, ch 75, § 2.*

** Please note this statute has been reviewed and interpreted by South Dakota courts. The following are citations to the decision available at the time this manual was created:

- *Dohrman v. Lawrence County*, 1966, 82 S.D. 207, 143 N.W.2d 865.

In reviewing the cited authorities, it is encouraged that you discuss the matter with your state's attorney and also determine whether any other guidance has been issued.

Commission Note.

Section 5, ch 75, SL 1987, provides that any agreement entered into prior to the effective date of the act designed to affect the purposes of the act is authorized.

Amendments.

The 1987 amendment rewrote the first sentence, which formerly read "Any board of county commissioners may obtain and pay for all forms of liability insurance protecting and insuring the county against such acts or omissions for which the county may be legally liable", and in the second sentence substituted "coverage or other arrangement obtained shall protect" for "coverage obtained shall provide protection for."

21-32A-1. Waiver of sovereign immunity to extend of risk sharing pool or insurance coverage. To the extent that any public entity, other than the state, participants in a risk sharing pool or purchases liability insurance and to the extent that coverage is afforded thereunder, the public entity shall be deemed to have waived the common law doctrine of sovereign immunity and shall be deemed to have consented in this section and any other party may be sued. The waiver contained in this section and 21-32A-2 and 21-32A-3 is subject to the provisions of §3-22-17.

Sources: SL 1986, ch 175, § 1; 1987, ch 163, § 1.

** Please note this statute has been reviewed and interpreted by South Dakota courts. The following are citations to decisions available at the time this manual was created (in no particular order):

- *Cromwell v. Rapid City Police Dept.*, 632 N.W.2d 20, 2001 S.D. 100.
- *Gasper v. Freidel*, 1990, 450 N.W.2d 226.
- *Hall v. City of Watertown ex rel. City of Watertown Police Dept.*, 636 N.W.2d 686, 2001 S.D. 137, rehearing denied.
- *Wilson v. Hogan*, 1991, 473 N.W.2d 492.
- *Hansen v. South Dakota Dept. of Transp.*, 584 N.W.2d 881, 1998 S.D. 109.
- *Gulbranson v. Flandreau Tp.*, 1990, 458 N.W.2d 361.
- *Tipton v. Town of Tabor*, 567 N.W.2d 351, 1997 S.D. 96, rehearing denied.
- *Patterson Farm, Inc. v. City of Britton, S.D.*, 1998, 22 F.Supp.2d 1085.
- *Webb v. Lawrence County*, 1998, 144 F.3d 1131.
- *Siefkes v. Watertown Title Co.*, 1989, 437 N.W.2d 190.
- *Unruh v. Davison County*, 744 N.W.2d 839, 2008 S.D. 9, rehearing denied.
- *Brown v. Egan Consol. School Dist. No. 50-2*, 1989, 449 N.W.2d 259.
- *Olesen v. Town of Hurley*, 691 N.W.2d 324, 2004 S.D. 136.

In reviewing the cited authorities, it is encouraged that you discuss the matter with your state's attorney and also determine whether any other guidance has been issued.

County Officers Authorization to Attend Meetings

The following county officials are authorized by resolution of the board of county commissioners to attend educational conferences, meetings and conventions within or without the state of South Dakota which pertain to the betterment and advancement of county government: commissioners, highway superintendents, auditors, treasurers, register of deeds, state's attorneys, sheriffs, county assessing officers and county coroners. (SDCL 7-7-25 and 7-7-26).

7-7-25. Meetings of county officials for advancement of county government – Authorization. County commissioners, highway superintendents, auditors, treasurers, register of deeds, state's attorneys, sheriffs, county assessing officers and county coroners are hereby authorized to attend educational conferences, meetings, and conventions held and conducted within or without the state of South Dakota pertaining to the betterment and advancement of county government as authorized by resolutions of the board of county commissioners.

Source: SL 1931, ch 119; SL 1933, ch 69, § 1; SDC 1939, § 12.1913; SL 1951, ch 28; SL 1953, ch 25; SL 1959, ch 30; SL 1961, ch 36; SL 1964, ch 29; SL 1965, ch 28, § 1; SL 1968, ch 16, § 2; SL 1972, ch 40, § 1; SL 1974, ch 55, § 11; SL 1975, ch 75, § 1.

**** Please note this statute has been reviewed and interpreted by the South Dakota Attorney General. The following are citations to South Dakota Attorney General Opinions available at the time this manual was created:**

- Op.Atty.Gen. Opinion No. 88-44, 1988 WL 483259.
- *Clerk of courts attending meeting called by director of vital statistics, authority of county to pay expenses*, Report 1945-46, p. 79.
- *Convention of school superintendents called by superintendent of public instruction, mileage and living expenses allowed*, Report 1935-36, p. 188
- *Deputy assessor not entitled to expenses unless serving as principal assessing officer*, Report 1959-60, p. 136.
- *Deputy may attend convention on behalf of principal and receive expenses*, Report 1957-58, p. 113.
- *Dues of state's attorney is national district attorney's association and in South Dakota state's attorneys association paid by county*, Report 1965-66, p. 309; 1967-68, p. 236.
- *Expense fund computed on percentage of total amount budgeted for per diem, compensation and mileage*, Report 1953-54, pp. 152, 347.
- *Expenses in attending meetings and conventions, per diem not included*, Report 1959-60, p. 78.
- *Expenses may include hotel and meal expenses, per diem and mileage*, Report 1963-64, p. 178.
- *Expenses may include tuition, room and board*, Report 1959-60, p. 136.
- *Sheriff attending meeting at request of FBI agent, expenses not allowed*, Report 1939-40, p. 702.
- *Sheriff attending peace officers' meeting where attendance was voluntary, expenses not allowed*, Report 1943-44, p. 228.
- Opinion No. 88-44.

In reviewing the cited authorities, it is encouraged that you discuss the matter with your state's attorney and also determine whether any other guidance has been issued.

7-7-26. Prior authorization required for reimbursement of expenses for attending meetings – Vouchers for payment. No charge for expenses in attending any such meeting shall be a charge against the county unless authorized and approved by the county commissioners prior to conveying of any such meeting. Upon the actual officers as designated in § 7-7-25 shall be paid their actual necessary expenses on duty executed vouchers submitted to the board.

Source: SL 1931, ch 119; SDC 1939, § 12.1913; SL 1951, ch 28; SL 1953, ch 25; SL 1959, ch 30; SL 1961, ch 36; SL 1964, ch 29; SL 1965, ch 28, § 1; SL 1968, ch 16, § 2.

**** Please note this statute has been reviewed and interpreted by the South Dakota Attorney General. The following are citations to South Dakota Attorney**

General Opinions available at the time this manual was created (in no particular order):

- *Op. Atty. Gen. Opinion No. 88-44, 1988 WL 483259.*
- *Opinion No. 75-2.*
- *Opinion No. 88-44.*

In reviewing the cited authorities, it is encouraged that you discuss the matter with your state's attorney and also determine whether any other guidance has been issued.

Life and Health Insurance

The county commissioners have the power to enter into group life and group health insurance contracts for the protection and benefit of its officers and employees, and their immediate families. The board may pay all or part of the premium for its officers and employees and pay not more than one-half of the premiums for their families.

7-8-26.1. Life and health insurance contracts for county officers and employees.

The board of county commissioners may enter into group life and group health insurance contracts for the protection and benefit of its officers and employees, and their immediate families. The board may pay all or part of the necessary premiums for its officers and employees and for the immediate families of those officers and employees.

Source: *SDC 1939, § 12.0617 as added by SL 1969, ch 19; SL 1983, ch 41, § 2; SL 1983, ch 42, § 1; SL 1991, ch 59, § 2.*

***** Please note this statute has been reviewed and interpreted by the South Dakota Attorney General. The following is a citation to the South Dakota Attorney General Opinion available at the time this manual was created:***

- *Op. Atty. Gen. Opinion No. 65, 1977 WL 36003.*

In reviewing the cited authorities, it is encouraged that you discuss the matter with your state's attorney and also determine whether any other guidance has been issued.

Public Employee Union

Chapter 3-18 governs public employee union. Public employees have the right to form and join labor of employee organizations, and have the right not to form and join such unions. Public employees have the right to designate representatives for the purpose of meeting and negotiating with the governmental agency with respect to grievance procedures and conditions of employment (SDCL 3-18-2). The department of labor enforces statutes governing unfair practices of employers and employee organizations (SDCL 3-18-10). The commissioners may apply for injunctive relief upon the existence of a strike. (SDCL 3-18-14)

3-18-2. Rights relating to labor organizations – Designation of representatives – Discrimination against employees exercising rights as misdemeanor – Good faith negotiations – Intimidation. Public employees shall have the right to form and join labor of employee organizations and shall have the right not to form and join labor such organizations. Public employees shall have the right to designate representatives for the purpose of meeting and negotiating with the governmental agency or representatives designated by which it with respect to grievance procedures and conditions of employment and after initial recognition by the employer, it shall be continuous until questioned by the governmental agency, labor or employee organization, or employees, pursuant to § 3-18-5. It is a Class 2 misdemeanor to discharge or otherwise discriminate against an employee for the exercise of such rights, and the governmental agency or its designated representatives shall be required to meet and negotiate with the

representatives of the employees at reasonable times in connection with such grievance procedures and conditions of employment. The negotiations between the governmental agency or its designated representatives and the employee organization or its designated representative shall be conducted in good faith. Such obligation does not compel either party to agree to a proposal or require the making of a concession but shall require a statement of rationale for any position taken by either party in negotiations. It shall be unlawful for any person or group of persons, either directly or indirectly to intimidate or coerce any public employee to join, or refrain from joining, a labor or employee organization.

Source: SL 1969, ch 88, § 7, subdiv 2; SL 1970, ch 26, § 1; SL 1973, ch 31; SL 1974, ch 33; SL 1980, ch 24, § 48.

Cross-References.

Penalties for classified misdemeanors, § 22-6-2.

** Please note this statute has been reviewed and interpreted by South Dakota courts. The following are citations to decisions available at the time this manual was created (in no particular order):

- *Winslow v. Fall River County*, 909 N.W.2d 713, 2018 S.D. 25.
- *International Union of Operating Engineers v. City of Pierre*, 800 N.W.2d 738, 2011 S.D. 37.
- *Bon Homme County Com'n v. American Federation of State, County, and Mun. Employees (AFSCME), Local 1743A*, 699 N.W.2d 441, 2005 S.D. 76.
- *West Central Educ. Ass'n v. West Central School Dist. 49-4*, 655 N.W.2d 916, 2002 S.D. 163.
- *Council of Higher Educ. v. South Dakota Bd. of Regents*, 645 N.W.2d 240, 2002 S.D. 55.
- *Aberdeen Ed. Ass'n v. Aberdeen Bd. of Ed., Aberdeen Independent School Dist.*, 1974, 88 S.D. 127, 215 N.W.2d 837.
- *Local 1922 v. State*, 1989, 444 N.W.2d 10.
- *State, Div. of Human Rights ex rel. Miller v. Miller*, 1984, 349 N.W.2d 42.
- *Lindsey v. Minnehaha County*, 1979, 281 N.W.2d 808.
- *General Drivers and Helpers Union v. Brown County*, 1978, 269 N.W.2d 795.
- *Hanson v. Vermillion School Dist. No. 13-1*, 727 N.W.2d 459, 2007 S.D. 9.
- *Jensen v. Bonesteel-Fairfax School Dist. No. 26-5*, 1991, 473 N.W.2d 467.
- *Wessington Springs Educ. Ass'n v. Wessington Springs School Dist. No. 36-2*, 1991, 467 N.W.2d 101.
- *Fries v. Wessington School Dist. No. 2-4*, 1981, 307 N.W.2d 875.
- *South Dakota Bd. of Regents v. Heege*, 1988, 428 N.W.2d 535.
- *Board of Regents v. Carter*, 1975, 89 S.D. 40, 228 N.W.2d 621.

In reviewing the cited authorities, it is encouraged that you discuss the matter with your state's attorney and also determine whether any other guidance has been issued.

Collateral References:

Labor relations 1-8, 52, 86-88, 342, 510.

3-18-3.3. Rules on unfair practices. The Department of Labor and Regulation shall promulgate rules pursuant to chapter 1-26 to specify procedures to enforce the provisions of §§ 3-18-3.1 and 3-18-3.2.

Source: SL 1973, ch 30, § 3; SL 1993, ch 375, § 3; SL 2011, ch 1 (Ex. Ord. 11-1), § 33, eff. Apr. 12, 2011.

** Please note this statute has been reviewed and interpreted by South Dakota courts. The following is a citation to the decision available at the time this manual was created:

- *Jensen v. Bonesteel-Fairfax School Dist.* No. 26-5, 1991, 473 N.W.2d 467

In reviewing the cited authorities, it is encouraged that you discuss the matter with your state's attorney and also determine whether any other guidance has been issued.

3-18-15.5. Grievance procedures for employees of political subdivisions. The provisions of § 3-18-15.1 do not apply to employees of political subdivisions unless those employees are members of a public employee union or the governing body of a political subdivision has adopted an ordinance or resolution establishing a grievance procedure for all employees of the political subdivision.

Source: SL 2013, ch 23, § 1.

3-18-10. Strikes prohibited – Right to submission of grievance. No public employee shall strike against the state of South Dakota, any of the political subdivisions thereof, any of its authorities, commissions, or boards, the public school system or any other branch of the public service. Provided, however, that nothing contained in this chapter shall be construed to limit, impair or effect, the right of any public employee to the expression or communication of a view, grievance, complaint or opinion on any matter related to the conditions or compensation of public employment or their betterment with the full faithful and proper performance of the duties of employment.

Source: SL 1969, ch 88, § 2.

** Please note this statute has been reviewed and interpreted by South Dakota courts. The following are citations to decisions available at the time this manual was created (in no particular order):

- *Bon Homme County Com'n v. American Federation of State, County, and Mun. Employees (AFSCME)*
- *American Fed'n of State, County & Mun. Employees Local 1922 v. State*, 444 N.W.2d 10, 1989 S.D. LEXIS 115 (July 5, 1989)

In reviewing the cited authorities, it is encouraged that you discuss the matter with your state's attorney and also determine whether any other guidance has been issued.

Collateral References

Interference with production by concerted action of employees, short of formal strike, as effected by labor relations acts, 25 ALR 2d 315.

Right of public employees to strike or engage in work stoppage, 37 ALR3d 1147.

Who are employees forbidden to strike under state enactments or state common law rules prohibiting strikes by public employees or stated classes of public employees, 22 ALR 4th 1103.

Work stoppage, damage liability of state or local public employees union or union officials for unlawful work stoppage, 84 ALR 3d 336.

3-18-14. Injunctive relief in case of strike. The governing boards of the state and its political subdivisions may apply for injunctive relief in circuit court immediately upon the

existence of a strike or related activities, and the state's attorney of every county shall have the same duty and enforcement of the chapter.

Source: SL 1969, ch 88, § 6; 1973, ch 32.

Commercial Driver License Manual

<https://dps.sd.gov/driver-licensing/commercial-drivers-license>

