SOUTH DAKOTA COUNTY OFFICIAL HANDBOOK

SOUTH DAKOTA ASSOCIATION OF COUNTY OFFICIALS
300 East Capitol Avenue Suite 2
Pierre, South Dakota 57501
WWW.SDCOUNTIES.ORG
605-224-1968
sdaco@sdcounties.org
REVISED2009

Table of Contents

CHAPTER 1 ..... **1**

RELATION OF THE COUNTY GOVERNMENT TO THE STATE GOVERNMENT **1**

1.001 Legal status of South Dakota Counties 1
1.002 Names & Boundaries of Counties 1
1.003 Limitations of State Government 1
1.004 Home Rule 1
1.005 Intergovernmental Cooperation 2
1.006 Plats Outside Municipalities 3
1.007 Abatement of Public Nuisances 3

CHAPTER 2 ..... **4**

OFFICE OF COUNTY COMMISSIONER **4**

2.001 Number of Commissioners and Terms of Office 4
2.002 Qualifications for the Office of County Commissioner 4
2.003 Compatible and Incompatible Offices (County Commissioners) 4
2.004 Personal Interest of Commissioner in Business with County 5
2.005 Personal Interest of Commissioner in Business with County 5
2.006 Change in Commissioner Districts 5
2.007 Change of Districts by Alteration of Division of Counties 6
2.008 Vacancies on the County Board 7
2.009 Removal of Commissioners from Office 7
2.010 Filling Vacancies on the County Board 7
2.011 DeFacto County Commissioners 8
2.012 Time and Place of Board Meetings 8
2.013 Chairman of the Board 9
2.014 Procedure of meetings 10
2.015 Per Diem and expenses of County Commissioners 10

CHAPTER 3 ..... **11**

GENERAL POWERS AND DUTIES OF THE COUNTY BOARD **11**

3.001 Powers of the County Commissioners 11
3.002 Ordinances and Resolution 13
3.003 Powers of the County Board Not Exercised by Individual Members 15
3.004 Implied Powers of the Board 15
3.005 Appeal from Decisions of Board 16
3.006 Petitions Presented to the Board 16
3.007 Designation of Official newspaper 16
3.008 Publication of Proceedings of meetings and Legal Notices 17
3.009 Duty to Provide Bulletin Board 18

3.010 Purchase Advertising Time for Public Announcements 19
3.011 Power of Eminent Domain 19
3.012 Liability of the County and the County Board 19
3.013 Power to Obtain Liability Insurance 20
3.014 Duties of the Board in the Establishment of Election Precincts 20
3.015 Duties of election Canvassing and County Recount Boards 21
3.016 Control of Election Officials 22
3.017 Voting machines 23
3.018 Electronic Voting System 24
3.019 Consolidation and Change of County Boundaries 24
3.020 Establishment of Commissioner Districts After Consolidation or Boundary Change 25
3.021 Records of Consolidated Counties 25
3.022 Powers and Duties in Division of Counties 25
3.023 Financial Settlement in Divided County 26
3.024 Distribution of Records of a Divided County 27
3.025 Location of County Seat 27
3.026 Creation of Civil Townships 27
3.027 Provision for official Seal 29
3.028 Regulation of Liquor Sales 29
3.029 Dance hall Regulation 31
3.030 Maintenance Costs of County Jail Inmates on Work Release 31
3.031 Providing Legal Counsel to Indigents 31
3.032 Establishment of Public Defenders 32
3.033 County Legal Expense Fund 33
3.034 Standards for Obscenity 34

CHAPTER 4 35

COUNTY OFFICERS AND EMPLOYEES 35

4.010 Officer Distinguished from Employees 35
4.011 Officers to be Elected 35
4.012 Terms of Elected Officials 35
4.013 Eligibility for County Office 36
4.014 Official Oath and Bond 36
4.015 Administering of Oaths 37
4.016 Creation of Vacancies in Offices 38
4.017 Removal from Offices 38
4.018 Appointments to Fill Vacancies 39
4.019 De Facto Officer 41
4.020 Record Inspection 41
4.021 Audit of Officer's Accounts 42
4.022 Required Reports of County officers 44
4.023 Accounting off Public Property 44
4.024 Salaries and Fees 45
4.025 Salaries of Certain County Officials 46
4.026 Mileage Expense Payments 46
4.027 County Officer's Convention, Research, and the SD Association of County Commissioners 48

4.028 Compatible and Incompatible (general) 49
4.029 County Offices 49
4.030 Acknowledgement of Instruments 49
4.101 Hiring of Deputies and Employees 50
4.102 Deputy Sheriff 50
4.103 Deputies and Assistants to State's Attorney 51
4.104 Welfare Workers 52
4.105 Veterans' Service Officer 53
4.106 Veteran's Preference in County Employment 54
4.107 Hours of Labor 54
4.108 Vacations Allowed Employees and Deputies 54
4.109 Liability for Acts of Employees 55
4.110 Public Employees Union 55
4.111 Liability Insurance and Workman's Compensation 56
4.112 Life and Health Insurance 57
4.113 Unemployment Compensation 57
4.114 Personal Interest of Public Officer 57
4.115 Employment of Consultants 58
4.116 Legal Holidays 59
4.201 Register of Deeds 60
4.202 Treasurer 63
4.203 Deposit and Care of County Funds 66
4.204 Duty of Treasurer to Insure County Property 67
4.205 Bond of Treasurer 67
4.206 Auditor 68
4.207 Election duties of the Auditor 68
4.208 Sheriff 76
4.209 Jails and Determination of Jail Expenses for Prisoners 79
4.210 Coroner 81
4.211 State's Attorney 82
4.212 Vacancy in Office of State's Attorney 83
4.213 Fees and Expenses of State's Attorney 83
4.214 Clerk of Courts 84
4.215 County Constables 84
4.216 Detention of Children 84
4.217 Incarceration of child under fifteen 85
4.218 Circuit Court and Civil Actions 86
4.219 Assessors 88
4.220 Deputy Assessor 88
4.221 County Manager – Optional form of Government 89
4.222 Combining Offices 89

CHAPTER 5 91

AGRICULTURE 91

5.001 County Agricultural Extension Services 91
5.002 Cooperation with Soil Conservation Districts 91

5.003 Holding of County Fairs....92
5.004 Private Operation of County Fair....94
5.005 Sending of Exhibits to State Fair....94
5.006 Forest Protection and Extension....94
5.007 Control of Animal Disease....95
5.008 Scabies and Brucellosis Control....95
5.009 Animal Damage Control....95
5.010 Weed and Pest Control....97
5.011 Construction of Pipelines....99
5.012 Establishment of irrigation Districts....99
5.013 County Drainage Commission....100
5.014 County Planning and Zoning....100
5.015 Rural Fire Protection....103
5.016 Water Districts....105
Watershed Districts:....105
Water Development Districts:....107

CHAPTER 6....108

ADMINISTRATION OF EDUCATION & LIBRARIES....108

6.001 Education and County Administration....108
6.002 Duties of the County Commissioners Regarding School Administration....108
6.003 Duties of Other County officials Regarding School Administration....109
6.004 County General School Fund....111
6.005 Transfer of School district and County Property....111
6.006 County And School Libraries....111

CHAPTER 7....112

COUNTY PROPERTY....112

MANAGEMENT OF COUNTY REAL ESTATE....112

7.001 Scope of county Land Management Legislation....112
7.002 Classification of County Land....112
7.003 Acquisition of Tax Deed Land....113
7.004 Special Assessments....114
7.005 Sale of County Land Acquired by Tax Deed....114
7.006 Failure to Meet Contract Requirements of Tax Deed Land Sale....116
7.007 Assessment of Tax Deed Land After Sale....116
7.008 Responsibility to Clear Title After Resale of Tax Deed Property....117
7.009 Sale of Tax Deed Land to Federal Government....117
7.010 Lease of Certain County Real Estate....117
7.011 Right of Lessee to Construct Improvements....117
7.012 Building of Dams on Leased Land....118
7.013 Leasing of Oil Lands....118
7.014 Distribution of Rental Proceeds....119
7.015 Refunding of Rental Paid by Mistake....121
7.001 Action to Quite Title of Tax Deed Property....121

7.002 Reconveyance by Quit Claim Deed to Tax Property 121
7.003 Sale or Lease of Property Held for Public Purposes 121
7.004 Donation of County Lands 121
7.005 Lease of Real Estate Not Included in County Land Administration and Managements Act 123
7.006 Private Leasing of Real Estate 124
7.007 Employment of Real Estate Agents 124
7.008 Purchase of Real Estate at Execution Sale 124
7.009 Exchange or Lease of County and Private Land 124
7.010 Exchange of Land with the State or Federal Government 126
7.011 Disposition of property of Consolidated Counties 126
7.012 Acquisition of Historic Sites and the County Historic Preservation Commission 126
7.013 Abandoned Cemeteries 127
7.014 Tax Exemptions of County and Other Property 127
7.015 Federal Condemnation of County Land 128

COUNTY BUILDINGS 128

7.101 Authorization to Construct County Buildings 128
7.102 Creation of Courthouse, Office, or Jail Building Funds 129
7.103 County Exhibition Building 130
7.104 Joint County and Municipal Building 130
7.105 Auditorium Building Fund 132
7.106 County Monuments 132
7.107 Acquisition of Building Sites 132
7.108 Contracts for County Buildings 133
7.109 Auditing Board 134
7.110 County Highway Shop 134

COUNTY AIRPORTS 134

7.201 Establishment of County Airport 135
7.202 Annual Appropriations for Air Facilities Authorized 137
7.203 Airport Operation by the County 137
7.204 Joint County and Municipal Airport 138
7.205 State Permission Required to Accept Federal Airport Aid 138
7.206 Airport Authorities Act 138

CHAPTER 8 140

COUNTY HIGHWAY AND BRIDGE SYSTEM 140

SUPERVISION OF COUNTY HIGHWAYS 140

8.001 Control of County Highway System 140
8.002 County highway Superintendent 140
8.003 Survey of Highways Before Construction or Repair 140
8.004 County Aid Roads in Townships 141
8.005 County control of Secondary Roads 142
8.006 Location of Highways by County Commissioners 143
8.007 Approval of State Transportation Committee 145

8.008 Private Roads....145
8.009 County Highways on State, County or city Boundary Lines....146
8.010 Secondary Highways on Township Boundary lines....146
8.011 Connections Between Roads Crossing County Lines....146
8.012 Restrictions of Use of County Highways....146
8.013 Highway Railroad Crossings....148
8.014 Authority to Designate Stop intersections....148
8.015 Access to Highway from Adjoining Property....148
8.016 Cattle Ways and Fences Across Highways....149
8.017 Responsibility for Repairing Highways....149
8.018 Snow Removal....150
8.019 Maintenance of Streets in a Municipality....151
8.020 Drainage of County Highways....151
8.021 Transmission Lines Over Highways....154
8.022 Controlled-Access Highway Facilities....155
8.023 Telephone Service....156
8.024 Transfer of Right of Way....158

COUNTY BRIDGES AND FERRIES....158

8.101 County Bridges....158
8.102 Bridge Construction Supervision....160
8.103 Purchase of Materials for Bridge Construction....160
8.104 Emergency Bridge Contracts....160
8.105 Bridge and Culvert Inspection....160
8.106 Bridges Between Counties....161
8.107 Guard Rails Required on Bridge....161
8.108 Toll Bridges....161
8.109 Private Bridge Corporations....162
8.110 Navigation on Rivers....162
8.201 Highway....163
8.202 Highway....163
8.203 Highway....163
8.204 Highway....163
8.205 Highway....163
8.206 Financial Statement to Person Displace by Highway Acquisition....163
8.207 Road and Bridge Levies....163
8.208 Right-of-Way....164
8.209 County Vehicles....164
8.210 Highway Maintenance Facilities....165
8.211 Wheel Tax for Highway and Bridge Maintenance....165
8.212 Hunting License Revenue....165

CHAPTER 9....167

HEALTH, WELFARE AND RECREATION....167

PUBLIC HEALTH DUTIES....167

9.001 Responsibility for Health Conditions 167
9.002 County and District Health Department 167
9.003 Establishment and Issuance of Bonds for a County Hospital 169
9.004 Operation of County Hospital 170
9.005 Joint county and Municipal Hospitals, Nursing Homes and Homes for the Aged 172
9.006 County Loans and Grants for Medical Services 173
9.007 Hospitalization of Indigent Person in Emergency and Non-Emergency Cases 173
9.008 Mental Health Centers 174
9.009 County Nurse 174
9.0010 Care of Mentally Ill 174
9.0011 Care of the Mentally Retarded 176
9.0012 Creation of Sanitary Districts 176
9.0013 Public Hospital Districts 177
9.0014 Hospital and Medical Insurance 178
9.0015 Vital Statistics and Permits 179
9.0016 Contribution to Safety Programs 179
9.0017 Home Health Services 179
9.0018 Drug Education Programs 180
9.0019 Air Pollution control 180
9.0020 Solid Waste Disposal 181

B. ADMINISTRATION OF POOR RELIEF 182

9.101 Responsibility for Poor Relief 182
9.102 Legal Residences of Needy Persons 182
9.103 County Care of the Sick 184
9.104 County Day Care Centers 185
9.105 Burial at County Expense 185
9.106 Administration of Poor Relief 186
9.107 Discontinuance of County Home for the Poor 187
9.108 Care of Poor Persons in Absence of County Home 187
9.109 County Physician for Services to Poor Persons 188
9.110 Poor Relief Lien 188
9.111 Foreclosure and Sale of Poor Relief Lien Property 188
9.112 Compromise or Settlement of Poor Relief Liens 189
9.113 Child and Mother Welfare 190
9.114 Public Assistance 190
9.115 Catastrophic County Poor Relief Fund 190

PARKS AND RECREATIONAL FACILITIES 191

9.201 Establishment of County Parks 191
9.202 Acquisition of Land Surrounding Bodies of Water for Park Purposes 191
9.203 Sale of Park Land Surrounding Lakes 191
9.204 Supervision of County Parks 192
9.205 Granting Easements of Park Land 192
9.206 Public Recreation and playgrounds 192
9.207 Cooperation with Municipalities and the Department of Game, Fish and Parks 193

EMERGENCY SERVICES 193

9.301 Ambulance Districts 193

CHAPTER 10 195

FINANCE AND TAXATION 195

GENERAL FINANCE 195

10.001 Importance of County Finance 195
10.002 Appropriation for more than One Year 195
10.003 Transfer of Funds 195
10.004 Settlements Between County Officers and the County Board 196
10.005 Reward for Criminals 196
10.006 Cooperation with Federal Agencies 196
10.007 Federal Funds for Taxing Subdivisions 196
10.008 Use of Tax Funds for Abortions 196
10.009 Economic Development Finance Authority 196
10.0010 Payments in Lieu of Federal Taxes 197

COUNTY BUDGET 197

10.101 Duty to prepare and Adopt Budget 197
10.102 Provisional Budget 197
10.103 Hearing on Provisional Budget 198
10.104 Adoption of Annual Budget 198
10.105 Supplemental Budget 199
10.106 Financial Report of Auditor 200
10.107 Time Limit on Appropriations 201
10.108 Unpaid Claims and Incomplete Contracts 201
10.109 Temporary Loans Secured as Result of Delinquent Taxes 201
10.110 Transfer of Special Funds 202
10.111 Expenditures in Excess of Budget Appropriations 203
10.112 County Budgeting for Unanticipated Expenses 204

TAXATION POWERS 204

10.201 Determination of Annual Tax Levy 204
10.202 Limit on County Tax Levies 205
10.203 Exceptions to Tax Levy Limits 206
10.204 Purpose of Tax Levies 207
10.205 Purposes for Tax Levies in Unorganized Counties 207
10.206 Assessment of Property 207
10.207 General Property Equalization 210
10.208 Equalization of Taxes in Counties with School and Endowment Lands 212
10.209 Classification and Valuation of Property Within County 213
10.210 Personal Property Tax 214
10.211 Scavenger Tax law 214
10.212 Payment of Real Property Taxes 214
10.213 Abatement, Refund, Compromise, or Cancellation of Taxes 215

10.214 Compulsory Refunds 221
10.215 Municipalities Refusing Concurrence in Abatement or Refund of Taxes 222
10.216 Taxes Paid Under Protest 222
10.217 State Board of Equalization 223
10.218 Tax Liens 223
10.219 Sales Exempt from State Sales Tax 223
10.301 County Purchasing Committee 225
10.302 Bids Required for County Contracts 225
10.303 County Contracts 229
10.304 Contract Preference to South Dakota Firms 231
10.305 Presentation of Claims 232
10.306 Refusal of Claims approved by Commissioners 233
10.307 Payment of Warrants 233
10.308 Registry and Nonpayment of Warrants Due to Lack of Funds 234
10.401 Indebtedness and bond issues 235
10.402 Issuance and Sale of Bonds 235
10.403 Legalizing Bonds Issued Irregularly 236
10.404 Debt Service for Bond Issues 236
10.405 Refunding bonds 237
10.406 Judgment Bonds 238
10.407 County Building Bonds 238
10.408 Economic Development Bonds 238
10.409 Investment of Funds 239

CHAPTER 11 240

MISCELLANEOUS COUNTY PROVISIONS 240

11.001 Social Security Coverage 240
11.002 Retirement Systems 240
11.003 Savings bonds through Salary Deductions 241
11.004 Civil Defense 241
11.005 Petition for Municipal Incorporation 242
11.006 Penalty for Failure to Make Report 242
11.007 Weather Modification Fund 242
11.008 Flood Control 243
11.009 Preservation for Archaeological Resources 243
11.0010 Continuity of Government- Executive, Legislative and Judicial Functions 243
11.0011 Continuity of Government- Seat of Government 244
11.0012 Cancellation of checks or Warrants not Timely Presented 245
11.0013 Local industrial Development Corporation Assistance 245
11.0014 County Provisions not in the Handbook 245

Chapter 1
Relation of the County Government to the State Government

1.001 Legal status of South Dakota Counties

Each county, either organized or unorganized, is a body corporate for civil and political purposes only, as such may sue and be sued, plead and be impleaded, in any court in the state (SDCL 7-18-1). County governments, however, are classified as quasi-municipal corporations of quasi-corporations and are regarded as public or state agencies charged with the performance of public or governmental functions as agents or the state and, as such, are not liable for damages 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)). Furthermore, an unorganized county, according to the SD Supreme Court, cannot be sued although it is attached to an organized county for judicial purposes. As the county is an artificial being created by law, it has only such power as are conferred upon it by statue. (Pommarance v. Washabaugh County, 61SD422, 249 NW 734 (1933)

1.002 Names & Boundaries of Counties

The names and boundaries of all counties which existed when the South Dakota Territory became a state were determined and declared legal; however, they are subject to change as provided by constitutional provisions and state law (SDCL 7-1-1, Cn IX, 1). Boundary lines for the organized counties are outlined in the South Dakota Codified Laws. (SDCL 7-1-2 to 7-1-68)

1.003 Limitations of State Government

The state legislature is generally prohibited from enacting any private or special laws which regulate county affairs. (Cn. III, 23)

1.004 Home Rule

Any county or city or combination thereof may adopt a home rule charter. Such chartered governmental unit may exercise any legislative power or perform any legislative power or perform any function not denied by its charter, the Constitution or general laws of South Dakota. A chartered government may provide for any form or executive, legislative and administrative structure which shall be of superior authority to statute, provided that the legislative body is chosen by popular election and that the administrative proceedings are subject to judicial review. (Cn IX, 2)

SDCL Chapter 6-12 deals with home rule charters. Expenditures may be made from county general funds for the preparation and sponsorship of a home rule charter and the county pays the cost of an election conducted of the question of adoption or amendment of a charter. The charter may either be initiated by the voters or provided for by the Board of County Commissioners (SDCL 6-12-1 to 6-12-4).

The standards set within the charter must be at least as stringent as those set by state law. (SDCL 6-12-5) The power of home rule government does not include the following powers:

1. To enact private or civil law governing civil relationships except as incident to the exercise of an independent power.
2. To define and provide for the punishment of a crime, but this in not a prohibition from providing punishment for the violation of ordinances or charter provisions by a fine not exceeding five hundred dollars or by imprisonment not exceeding six months or by both.
3. To abridge laws relating to secondary and elementary education.
4. To change assessment practices and procedures relating to taxation or property.
5. To exempt itself from providing the necessary personnel and facilities to perform services required by law to be performed by law to be performed by a like unit or units of local government.
6. Deny referendum on ordinances by bylaws provided by SDCL 9-19.
7. To regulate rates or conditions of service of any public utility regulated by the South Dakota Public Utilities Commission. (SDCL 6-12-6)

When a commission has been selected or appointed to draft a proposed charter or an amendment to a charter, an election on the question must be held within one year after initiation of the proposed action. (SDCL 6-12-7). Special election shall be called on any question involving a home rule charter unless another election is scheduled within one hundred twenty days of the initiation of the action. (SDCL 6-12-8) If there is no scheduled election qualifying under § 6-12-8, elections will be noticed and ballots will be prepared to accommodate absentee voting under the general election law, and if it is on the question of adopting of a charter or an amendment which has been drafted and approved by the initiators, such election shall be held within sixty days after its filing. (SDCL 6-12-9) The person charged with the conduct of an election concerning a question on adoption of a charter or amendment thereto shall, within thirty days after the canvass and return thereon, file with the secretary of state a certified copy of a charter or amendment adopted. Any person violating the provisions of this section is guilty of a Class 2 misdemeanor, but the failure of such person to so file shall not invalidate any election on such a question or a charter or amendment adopted pursuant thereto. (SDCL 6-12-11)

1.005 Intergovernmental Cooperation

Counties may exercise or transfer any of their powers for functions jointly or in cooperation with any other governmental entities within or without the state, except as the Legislature provides otherwise by law. (Cn. IX, 3)

Any power or powers, privileges, or authority exercised or capable of exercise by a public agency of this state may be exercised and enjoyed jointly with any other public agency of this state and jointly with any public agency of any other state or of the United States to the extent that the laws of such other state or of the United States permit such joint exercise or enjoyment. Any agency of South Dakota state government when acting jointly

with any public agency may exercise and enjoy all of the powers, privileges, and authority conferred by §§ 1-24-2 to 1-24-9, inclusive, upon a public agency. The provisions of this section do not apply to the power to tax or police powers, unless jointly held or otherwise authorized by law. (SDCL 1-24-2) These parties may enter into agreements for joint or cooperative action. Appropriate action by ordinance, resolution, or otherwise pursuant to the law of the governing bodies of the participants is necessary before such agreement may enter into force. The elements of the agreement are prescribed by statute (SDCL 1-24-3 to 1-24-5). Any county entering in such agreement may appropriate funds and may sell, lease, give or otherwise supply the administrative joint board or other legal or administrative entity created to operate the joint or cooperative undertaking by providing such personnel or services therefore as may be within its legal power to furnish (SDCL 1-24-7). Counties may contract with one or more public agencies to perform any governmental service, activity, or undertaking which any public agency entering onto the contract is authorized to perform. Such contract must be authorized by the governing body of each party to the contract (SDCL 1-24-8). None of these agreements relieve any county of any obligation imposed upon it by law except to the extent of actual and timely performance thereof by a joint board for other legal or administrative entity created by the agreement. (SDCL 1-24-9)

The county commissioners may not build a building for the sole purpose of renting it to other governmental agencies (AGR No. 74-13, SDCL 1-24-2). County snow equipment can be used on village streets if the county and village have entered into a contractual agreement. (AGR No. 74-20, SDCL 31-12-41)

1.006 Plats Outside Municipalities

Whenever any person wishes to plat any lands lying outside of a municipality not included in a municipal not included in a municipal addition or subdivision (as specified in SDCL 11-3-6) he must submit the same to the board of county commissioners for approval before recording his plat as specified in SDCL 11-3-6. (SDCL11-3-8)

The certificate of the county director of equalization should read substantially as follows: "The subscriber hereto, the Director of Equalization of_____ County, South Dakota, hereby certifies that I have received a copy of this plat," along with the date and signature of the county director. (AGR 1959-60, pp. 231-232)

Where there is a metes and bounds description of real property, the owner must plat and record the same before transfer of property can be made. The plat shows the location of the property conveyed, a certificate of the owner and the surveyor, and the certificate of the county treasurer. (SDCL 43-2-1, 43-21-4)

1.007 Abatement of Public Nuisances

The board of county commissioners of every county with a population of seventy thousand or more may, by ordinance, allow for the declaration and abatement of a public nuisance within the county outside the corporate limits of any municipality. For purposes of this section only, the feeding, breeding or raising of livestock or the operations of a livestock sales barn, is not presumed, by that fact alone, to be a nuisance.

Chapter 2
Office of County Commissioner

2.001 Number of Commissioners and Terms of Office

Organized counties have a board of commissioners consisting of not less than three nor more than five members, each of whom shall be elected at a general election only and whose term of office is four years commencing on the first Tuesday of January following the election. In order that the regular term of all county commissioners would not expire at the same time, in 1972 and every four years thereafter a commissioner is elected in each even numbered district and in 1970 and every four years thereafter a commissioner is elected in each of the other districts. (SDCL 7-8-1)

2.002 Qualifications for the Office of County Commissioner

To be elected as a county commissioner one must be a citizen of the United States, (SDCL 3-1-4) and a resident voter of the district from which elected (SDCL 7-8-2). As a voter the candidate must be eighteen years of age, not otherwise disqualified, and have complied with the provisions of law regarding voter registration (SDCL 12-3-1). When and incumbent is reelected that person must qualify as if newly elected (SDCL 3-1-1). Every elected or appointed official, before entering upon the duties of office, must qualify by taking an oath of office stating support of the Constitution of the United States and the Constitution of the State of South Dakota. (SDCL 3-1-5)

If any county commissioner moves from the district or if any county commissioner fails to attend the commission meetings for nine consecutive months, the office shall be declared vacant (SDCL 7-8-2). The person elected to office will be allowed twenty days to become fully qualified if there is a contest for the office or if the person is prevented or obstructed in any manner from entering the duties of the office. (SDCL 3-1-5)

A candidate who lacks eligibility for the office of county commissioner at the time of nomination and election may still run for the office providing requirements are met on the first Tuesday in January following the general election (AGR 1919-20, p. 436). Each candidate for county commissioner shall file a statement of financial interest with the county auditor of the county of residence within fifteen days after filing nominating petitions, or, if otherwise nominated, within fifteen days after the nomination is certified. (SDCL 12-25-30)

2.003 Compatible and Incompatible Offices (County Commissioners)

There are basically four instances when public offices are incompatible (1) when there are statutory prohibitions, (2) when one is subordinate to the other, (3) when one has supervision over the other, or (4) if the duties of the two offices are conflicting. The question is usually determined from an ascertainment of the duties imposed by law upon the officers. (AGR 1949-50, p.37)

By statute, no state officer can appoint as deputy any district officer; nor can a state treasurer appoint any county treasurer, register of deeds, sheriff, or county commissioner as deputy; nor can the clerk of courts, the register of deeds, or sheriff appoint as a deputy any of the others (SDCL3-2-2). No county commissioner shall be appointed as county highway superintendent. (SDCL 31-11-1)

Other public offices within the state which are compatible or incompatible with the office of county commissioner have been determined by the Attorney General as follows:

Compatible A commissioner may serve in one of the following public offices without disqualification from serving as a county commissioner: member of a town or city council, including the office of mayor (AGR 1919-20, p. 374; 1949-50, p. 37; 1951-52, p.120); regent of education (AGR 1933-34, p. 607); city, town or township assessor (AGR 1954-55, p. 91); member of the county weed and pest board (SDCL 38-22-23.2)

Incompatible A county commissioner may not serve in the following capacities: state legislator (AGR 1982-23), deputy director of assessments (AGR 1955-56, pp 304-305); civil defense director (AGR 1959-60, pp.73-74); deputy sheriff (AGR 1930-32, p. 617); county veteran service officer (AGR 1945-46, p.80)

2.004 Personal Interest of Commissioner in Business with County

The State Constitution prohibits a county commissioner from profiting financially, directly or indirectly, out of county money, or using county funds for any purpose not authorized by law (Cn. XI, II). These limitations prohibit a commissioner from selling merchandise to the county, even on the grounds of convenience or necessity (AGR 1937-38, p. 114). A commissioner may not voluntarily become interested in or benefit directly or indirectly from any contract, sales, or lease with the county (SDCL 3-16-7). For example, the county may not contract for insurance if one of its commissioners is a director, stockholder, executive officer, or otherwise interested in the agency selling the insurance. (AGR 1950-52, p.120).

2.005 Personal Interest of Commissioner in Business with County

A county commissioner must take an oath to support the Constitutions of the United States and of South Dakota, and to faithfully discharge the duties of office (SDCL 3-1-5). Other oath and bond regulations for the commissioner are the same as for several county officers.

2.006 Change in Commissioner Districts

The number of county commissioners of any county may be increased to five or seven or reduced to five or three. If fifteen percent of the registered voters of the county, based upon the total number of registered voters at the last preceding general election, petition the board of county commissioners for an increase or decrease in the number of county commissioners, the board shall submit the question to a vote of the voters of the county at the next general election. Notice of the submission of such question shall be given in the notice of the general election. (SDCL 7-8-3)

If at such election a majority of all votes cast is for an increase, the board within one hundred eighty days after the votes have been canvassed shall redistrict the county into numbered districts. As to any members of such

board whose terms of office extend for an additional two years beyond the next general election, the tenure of office is not affected, and in redistricting the county the board shall designate the districts to be represented by such members. The commissioner shall be a resident of the district that the commissioner is designated to represent. Each district for which representation is not provided by such designations shall, at the next ensuing general election, elect a commissioner, the term of office to be determined as provided in § 7-8-1. (SDCL 7-8-6)

If the election results in a majority for a decrease, the five or seven districts are thereby abolished and the board, within one hundred eighty days after the votes have been canvassed, shall redistrict the county into three or five numbered districts from each of which districts a commissioner shall be elected at the next general election, the term of office to be determined as provided in § 7-8-1. (SDCL 7-8-7)

When a county is redistricted as provided by § 7-8-6 or 7-8-7, the commissioners serving shall continue until their successors are elected or appointed and qualified and the previous district boundaries and commission shall, during such interval, continue for all purposes, except nomination and election of commissioners. (SDCL 7-8-8)

The board of county commissioners, at its regular meeting in February of each year ending in the numeral 2, after giving notice by publication for one week in the official newspapers of the county, shall change the boundaries of the commissioner districts if such change is necessary in order that each district shall be as regular and compact in form as practicable and it shall so divide and redistrict its county that each district may contain as near as possible an equal number of residents, as determined by the last preceding federal decennial census; or the board may, at its discretion, choose to have all of its commissioners run at large. (SDCL 7-8-10)

Upon such redistricting, as to any member or members of such board whose term or terms of office extend for an additional two years beyond the next election, the tenure of office shall not be affected, and in redistricting the county such board shall designate the district or districts to be represented by such member or members, the district or districts so designated to be a district or districts which would elect a commissioner at the next general election following that to be held in the year of such redistricting. Such commissioner may or may not be a resident of the district he is designated to represent. Each district for which representation is not provided by such designation or designations shall, at the next ensuing general election, elect a commissioner, the term of office to be determined as provided in § 7-8-1. (SDCL 7-8-11) Whenever the board of county commissioners shall change the boundaries of any commissioner district, as provided in § 7- 8-10, it shall publish notice of such change giving the boundaries of the new districts for at least two consecutive weeks in the official paper or papers of the county and when no paper is published in the county, the board shall cause notices to be posted in at least three public places in each commissioner district of which the boundaries have been changed. (SDCL 7-8-12)

The question of how a county is to be divided into commissioner districts is primarily a political and administrative matter for the legislative branch of government rather than the judicial branch. The state legislature has stipulated that the county commissioners observe certain statutory requirements. Inequalities in excess of one hundred votes from district to district must be avoided if possible. If the county board has exercised a proper discretion in compliance with the statutes and does not unreasonably deviate from the standards fixed by statutes, the courts will not interfere. (State v. Lemler, 77 SD 23, 84 NW2d418 (1957))

2.007 Change of Districts by Alteration of Division of Counties

When the boundaries of a county have been altered, the county board, at its next regular meeting, determines the boundaries of the commissioner districts in a manner provided by statute for establishing and changing the boundaries of commissioner district. In case a new county has resulted

from the alteration, the commissioners of the new county establish the boundaries of its districts. (SDCL 7-3-3)

2.008 Vacancies on the County Board

Every office shall become vacant on the happening of any one of the following events before the expiration of the term of such office: The death of the incumbent; His resignation; His removal from office; His failure to qualify as provided by law; His ceasing to be a resident of the state, district, county, township, or precinct in which the duties of his office are to be exercised or for which he may have been elected; His conviction of any infamous crime or of any offense involving a violation of his official oath; Whenever a judgment shall be obtained against him for a breach of his official bond. (SDCL 3-4-1) A vacancy is not created when a county commissioner ceases to be a resident of their former district because of a change of boundaries among the commissioner districts (AGR 1927-28, p. 116). Resignations may be made as follows: Of all elective county officers, by filing with the county auditor such resignation in writing, which shall be filed or deposited with the board of county commissioners, which resignation unless a different time is fixed therein shall take effect upon such filing. (SDCL 3-4-2)

Incapacity by reason of illness is not enumerated by statute as a cause for removal of an elective officer; incapacities by illness do not automatically create vacancies. Thus, the appointment of a guardian because of illness does not create a vacancy. An elected official is entitled to the emoluments of the office as long as they occupy the position. (AGR 1957-58, pp. 207-209)

2.009 Removal of Commissioners from Office

Any officer of any local unit of government may be charged, tried and removed from office for misconduct, malfeasance, nonfeasance, crimes in office, drunkenness, gross incompetency, corruption, extortion, oppression or gross partiality (SDCL 3-17-6). Proceedings for removal are brought in the name of the state by the state's attorney of the county in which the officer resides, by the Attorney General of the State for by either officer when so directed by the Governor (SDCL 3-17-7, 3-17-9). A hearing is held before a special term of the circuit court, and if the defendant is ruled against, defendant's office is immediately declared vacant. In that instance the court suspends the officer from exercising the duties of the office until the final determination of the issues. It immediately appoints some competent person to fill the office during the suspension period (SDCL 3-17-8). If the judge's final decision is in favor of the accused officer, the salary must be paid during the period of the suspension (SDCL 3-17-9). The accused official also retains the right of appeal to the South Dakota Supreme Court from any adverse decision from the circuit court. (SDCL 3-17-11)

2.010 Filling Vacancies on the County Board

An appointment to fill a vacancy on the county board may be made by the remaining members of the board. This appointment board should immediately appoint a suitable person from the district where the vacancy occurs. If there be an even number of county commissioners remaining on the board of county commissioners, the county auditor is called in and acts as a member of the board to fill the vacancy (SDCL 3-4-4). The board may adopt its own method and rules of procedure (AGR 1945-46, p. 110). The appointee, when qualified, will hold office until a successor is named and qualified (AGR 1950-

52, p. 430). A successor should be elected at the next general election, and the newly elected officer may qualify as soon as it has been officially the next general election, and the newly elected officer may qualify as soon as it has been officially determined that they are the elected officer. Moreover, a county commissioner may be elected only at a general election. (Noel v. Cunningham, 68 SD 606, 5 NW2d 402 (1942); AGR 1950-52, p. 439)

If a vacancy occurs within thirty days preceding an election day at which it may be filled, no appointment shall be made unless it be necessary to carry out such election and the canvass of the same according to law; in that case an appointment may be made at any time previous to such election to hold until after such election or until a successor is elected and qualified. (SDCL 3-4-5) When a vacancy occurs and there is not sufficient time to secure nominees at the primary election, an independent candidate may be elected at the general election to fill the vacancy (AGR 1935-36, p. 400). If, however, the vacancy occurs so near the Election Day that a candidate cannot lawfully be placed on the ballot, an appointment is made until the following general election (AGR 1917-18, p. 470). Likewise, if the vacancy occurs after a general election but before the official takes office, an appointee fills the vacancy until the next general election at which time the vacancy could be filled (State ex. Rel. Hellier v. Vincent, 20 SD 90, 104 NW914 (1905)). Persons appointed to offices as herein provided shall qualify in the same manner as is required of those elected, the time of which shall be prescribed in their appointment. (SDCL 3-4-7)

The death of an incumbent commissioner, regardless of the term for which elected, creates a vacancy which may be filled at the next general election providing there is sufficient time for individuals to initiate their candidacy (AGR 1959-60, 9931-32). A person appointed to fill a vacancy cause by death of an incumbent county commissioner's services only until the next general when an individual may be elected and qualified. If no one is elected, the appointment continues until someone is elected (AGR 1957-58, pp. 227-228). Nominations by party committee to fill vacancies occurring in nominations made in primary elections and certificates of nomination filed with the secretary of state and those to be filed with the county auditor shall be filed no later than the fourth Tuesday in August at 5:00 p.m. or mailed by registered mail by that date and time prior to the election. (SDCL 12-8-6)

2.011 DeFacto County Commissioners

Since the attorney general has ruled that the acts of a de factor officer are binding on the county and on the public, the acts of a person who has been acting as county commissioner, although that individual is not legally qualified, and whose cats have been accepted in good faith and without protest have the same effect as the actions of a qualified county commissioner. (AGR 1923-24, p. 96)

2.012 Time and Place of Board Meetings

The board of county commissioners shall meet and hold sessions for the transaction of business at the courthouse or at the usual place of holding court in January, April, July, and October of each year, and may adjourn from time to time. The county auditor or the chairman of the board of county commissioners may call special sessions if the interests of the county demand it by giving three days' notice of the special session by mailing a copy of the notice to each of the county commissioners at their designated post office addresses. In case of an emergency, a special session may be called by giving one

day's notice to each commissioner by telephone. An emergency for the purpose of this section is an unforeseen occurrence or combination of circumstances that calls for immediate action or remedy. (SDCL 7-8-4) All vacancies, except in the office of a member of the Legislature, representative in Congress, and United States Senator, shall be filled by appointment, as follows:(1) In state and district offices, and the Office of Supreme Court Justice and Circuit Judge, by the Governor; (2) In county and precinct offices, by the board of county commissioners, except vacancies on such board; (3) In civil township offices, by the board of supervisors or a majority of them, by warrant under their hands; and if a vacancy occurs from any cause in the foregoing board of appointment the remaining officers of such board shall fill any vacancy therein; and(4) In special purpose districts, unless otherwise provided, by the remaining board of trustees. (SDCL 3-4-3) The board of county commissioners shall hold its sessions as an open meeting and transact all business in a public manner. Meetings shall normally be held at the court house or at the usual place of holding court; however the board may occasionally hold its sessions at any other suitable place at the county seat or at other locations within the geographic county area if the meetings are held in a public place and if notice of the meeting is published once a week for at least two successive weeks before the meeting in the legal newspaper or newspapers of the county in which the meeting is to be held. Joint county-municipal planning sessions may be held at any suitable location within the county. All matters pertaining to the interests of the county shall be heard by the board in session only, but it may continue any business from any regular session to an intermediate day. (SDCL 7-8-16) In practice most county boards hold regular monthly meetings.

The county board has no power to act in a casual meeting; it can only act when convened as a board in legal session. A special session called to handle county affairs of an urgent nature, requires three days notice of the session by mailing a copy of the notice to each of the county commissioners at their several post office addresses or by giving the notice to each commissioner by telephone. In case of an emergency, a special session may be called by giving one day's notice to each commissioner by telephone. An emergency for the purpose of this section is an unforeseen occurrence or combination of circumstances that calls for immediate action or remedy. (SDCL 7-8-14; AGR 1961-62, p45)

2.013 Chairman of the Board

At the first meeting of the board of county commissioners in each year it shall select one of its number as chairman, who shall act as such during the year in which he is elected or until his successor is elected, and in case of vacancy from any cause whatever the board shall elect another chairman. It shall be the duty of the chairman to preside at the meetings of the board; and sign all orders and claims approved by the board. (SDCL 7-8-15). The chairperson may second a motion the same as any other member and call for the vote. (AGR 1953-54, p 41)

While no statute specially sets for the procedure in carrying on the duties of the county board in the absence of its regular chairperson, the Attorney General has held that the board has adequate authority to make rules or regulations designating one of its members as chairperson pro-term in the absence of its selected chairperson. (AGR 1953-54, pp. 263-264)

2.014 Procedure of meetings

Whenever the county board acts upon any petition, adopts any resolution, makes any appointment to fill any vacancy in a county office or enters any final order in proceedings pending before it, the members vote by yeas and nays. A record of the vote is kept by the county auditor who includes them in the published report of the minutes of the meeting (SDCL 7-8-17). The action of the commissioners must appear in the minutes; otherwise the action is not complete or effective (AGR No. 75-38; Boyd v. Lake County, 72 SD 431, 36 NW 2d 384 (1949)). When the board of county commissioners is equally divided on any question, it shall defer a decision until the next meeting of the board and the matter shall then be decided by a majority of the board. (SDCL 7-8-18). The board of county commissioners shall have the power to preserve order when sitting as a board and may punish contempt's by fines not exceeding five dollars or by imprisonment in the county jail not exceeding twenty-four hours. It may enforce obedience to all its orders by attachment or other compulsory process. (SDCL 7-8-19)

It seems to be the established rule of law that the refusal of one or more members of the county board to vote either for or against a proposal at a meeting does not break the quorum. Consequently, the action by the necessary vote of the remaining members is considered carried. (AGR 9155-56, pp.4-6)

A qualified interpreter shall be appointed in the following cases for persons who are deaf or mute or both in any proceeding before the board of county commissioners (SDCL 19-3-10). The interpreter is appointed by the chairperson of the commission. The commissioners determine and fix a reasonable fee for the services of the interpreter and provide for the payment of the costs out of funds appropriated for the operation of the board of commissioners. (SDCL 19-3-12)

Except as otherwise provided by law, the official meetings of the county commissioners are open to the public. Executive or closed meetings may be held for the sole purpose of considering student, employee and personnel matters. Any official action concerning such matters must be made at open official meetings. Anyone who violates these requirements is guilty of a misdemeanor. (SDCL 1-25-1, 1-25-2, 1-25-5)

2.015 Per Diem and expenses of County Commissioners

The board of county commissioners may determine the salary of the commissioners. Such salary may be set by the board of county commissioners at its first regular meeting of each year. If the board of county commissioners fails to determine a salary, then the salary of a county commissioner in any one year is:

(1) Seven thousand two hundred thirty-three dollars as per diem or salary in counties of thirty thousand populations or over;

(2) Six thousand five hundred sixty-six dollars as per diem or salary in counties of fifteen thousand population and over and not more than thirty thousand population;

(3) Five thousand three hundred ninety-seven dollars as per diem or salary in counties of eight thousand population and over and not more than fifteen thousand population;

(4) Four thousand eight hundred ninety-six dollars as per diem or salary in counties of less than eight thousand population.

Chapter 3
General Powers and Duties of the County Board

3.001 Powers of the County Commissioners

In addition to other powers specified or reasonably implied by state law and the state constitutional provisions, the board of county commissions has the following powers:

(1)To institute and prosecute civil actions in the name of the county, for and on behalf of the county;
(2) To make orders respecting the care and preservation of all property belonging to the county and to sell any real property of the county when authorized by law so to do;
(3) To levy a tax not exceeding the amount authorized by law, and to liquidate indebtedness;
(4) To audit the accounts of all officers having the care, management, collection or disbursement of any money belonging to the county or appropriated for its benefit;
(5) To construct and repair bridges; to open, lay out, vacate, and change highways; to purchase or acquire grounds for courthouse, jail, or other building sites, locate or relocate the courthouse on such sites; to establish election precincts in its county and appoint the judges of election; and, as a board of equalization, to equalize the
(6) To furnish necessary blank books, blanks, and stationery for the county auditor, register of deeds, county treasurer, state's attorney, sheriff, and other elected or appointed county officers, to be paid out of the county treasury; also a fireproof safe or vaults, when in its judgment the same shall be advisable, in which to keep all the books, records, vouchers, and papers pertaining to the business of the board;
(7) To superintend the fiscal concerns of the county and secure their management in the best possible manner;
(8) To regulate the transaction of business in alcoholic beverages, the use and consumption thereof, to establish the number of on-sale licenses which may be issued, provide for reasonable classification of on-sale licenses and to fix the fees to be charged for the various classifications which shall be uniform within each class, all consistent with the provisions of Title 35. The secretary of revenue shall be promptly furnished certified copies of all ordinances and resolutions or amendments thereto adopted relating to the exercise of these powers;
(9) To make ordinances prohibiting the sale or exhibition of any obscene matter; however, no county resolution shall be effective in any incorporated area within said county;
(10) To do and perform such other duties and acts as it is or may hereafter be required to do and perform;
(11) To provide additional compensation to the county treasurer, county auditor, county register of deeds, state's attorney, and sheriff. This compensation shall be in addition to the salaries prescribed in §§ 7-7-9.1, 7-7-12, and 7-12-15;
(12) To provide office space, in addition to that provided in the county courthouse, for state's attorneys, appointed officials of the county and other employees;
(13) To receive and administer grants, loans and assistance and to enter into agreements for cooperative action, with or on behalf of any public agency or nonprofit organization, to establish, promote and support community development;

(14) To enact ordinances to regulate and prevent the placing of ashes, dirt, garbage or any offensive matter in any highway or public ground or in any body or stream of water within the county, but outside of an incorporated municipality or outside of the one mile limits of any incorporated municipality;
15) To enact ordinances to regulate and compel the cleansing, abatement or removal of any sewer, cesspool or any unwholesome or nauseous thing or place;
(16) To license and regulate transient merchants, hawkers, solicitors, peddlers, itinerant vendors, and every person retailing tangible personal property or services, unless such business is carried on exclusively within the boundaries of a municipality or is carried on through home solicitation or from a fixed permanent location and place of business in this state where such goods and services are offered on a continuing basis;
(17) To enact by ordinance, for any portion of the county which is zoned, certain building codes pursuant to § 11-10-5.
(18) To prohibit or restrict open burning, after consultation with local fire officials and law enforcement officials, in order to protect the public health and safety.

Detailed explanations or these general powers are found in the subject matter sections of the handbook and statutes to which they relate. Various other provisions for the administration and regulations of county affairs exist, such as management and disposition of county property, construction of buildings, bonding of the county, and general fiscal management and part of the duty involved rests upon the county commissioners. In fact, many of the titles found in the South Dakota codified Laws contain certain provisions for additional duties of county commissioners.

The board of county commissioners shall have power to procure for the county a copy of the field notes of the original survey of the county by the United States and cause a map of the county to be constructed there from, on a scale of not less than one inch to a mile and laid off in congressional townships and sections, to be kept in the office of the county auditor and the field notes to be deposited in the same office. (SDCL 7-8-22)

The board of county commissioners may grant the right of constructing, laying, maintaining, and operating on any highway under its jurisdiction, pipelines and gas mains for the transportation of natural or artificial gas. (SDCL 7-8-23)

The board of county commissioners shall have power to appropriate funds for the purpose of defraying necessary expense of proper observance of Memorial Day each year. (SDCL 7-8-24)

The board of county commissioners shall have power to cooperate with the federal or state government or any duly constituted agency thereof by expending moneys for the care and distribution of federal surplus commodities, employing clerical help, office space, office supplies and equipment, telephone, and telegrams, and other incidental expenses and to pay for same out of the general fund and such cooperation shall include fixing of responsibility by designation of a single administrator or officer for the purpose of determining eligibility and supervising distribution and accountability, or the board may request the division of social welfare in writing to determine eligibility, relative to surplus commodities for the needy as defined in Title 28 and acts amendatory thereto. (SDCL 7-8-25)

The board of county commissioners may enter into group hospital and medical insurance contracts for the protection and benefit of its officers and employees, and the immediate families of those officers and employees. 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. (SDCL 7-8-26) 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. (SDCL 7-8-26.1)

The board of county commissioners, upon the creation of the district, and as a part of the order creating the district, shall appoint a board of no less than three nor more than five trustees to administer the affairs of the district. Each of the trustees shall be a resident of the district. The trustees so appointed upon creation of such district shall be appointed for staggered terms of one, two and three years. If more than one county is involved, one of the trustees shall be appointed from the county having the smallest population based on the most recent federal decennial census, and such trustee shall be given the three-year term. (SDCL 49-32A-7) The board of trustees shall prepare a budget for the expenses for the next year, which budget shall be presented by July first to the boards of county commissioners of the counties in the television district. The board of county commissioners of each county in the district shall appropriate funds required by the budget from the county general funds in the same proportion that the population of each county is to the total district population. (SDCL 49-32A-14)

County governing board members may serve on local housing authorities. A commission shall consist of five commissioners, who shall be residents of the area of operation of the commission, appointed after the resolution provided for in SDCL 11-7-7 becomes finally effective. In counties, the commission may be made up of members of the governing body, but may not include employees of the county. However, a majority of the commission may not be comprised of the governing body. A commissioner may be a notary public.

3.002 Ordinances and Resolution

Each county may enact, amend, and repeal such ordinances and resolutions as may be proper and necessary to carry into effect the powers granted to it by law and provide for the enforcement of each violation of any ordinance by means of any or all of the following:(1) A fine not to exceed the fine established by subdivision 22-6-2(2) for each violation, or by imprisonment for a period not to exceed thirty days for each violation, or by both the fine and imprisonment; or(2) An action for civil injunctive relief, pursuant to chapter 21-8. (SDCL 7-18A-2) An ordinance shall embrace only one subject, which shall be expressed in its title. (SDCL 7-18A-3) The title of all ordinances shall be read twice with at least five days intervening between the first and second reading. Any ordinance shall be signed by the chairman of the board or the acting chairman, filed with the county auditor and published once. However, an ordinance incorporating and adopting comprehensive regulations or a code promulgated, approved, and published by a recognized and established national organization prescribing building, electrical, plumbing, safety, fire, health, or milk regulations need not be published in a newspaper, but, upon adoption of such an ordinance, the auditor shall publish a notice of the fact of adoption once a week for two successive weeks. (SDCL 7-18A-5)

Except such resolutions or ordinances as may be necessary for the immediate preservation of the public peace, health, or safety, or support of the county government and its existing public institutions; which provide for an election or hearing on an improvement or assessment; or which call for bids which take effect upon the passage and publication thereof, every resolution or ordinance passed by a board shall take effect on the twentieth day after its completed publication unless suspended by operation of a referendum.(SDCL 7-18A-8)

The right to propose ordinances and resolutions for the government of a county shall rest with five percent of the registered voters in the county, based upon the total number of registered voters at the last preceding general election. (SDCL 7-18A-9) An initiated ordinance may not be proposed which would nullify such ordinances or resolutions as may be necessary for the immediate preservation of the

public peace, health, or safety or for the support of any government or existing public institutions, or which would nullify the purpose for which bonds have been sold by a county pursuant to statutory authority, unless proposed within a period of thirty days after the first publication of the advertisement of the notice of sale of such bonds. (SDCL 7-18A-10)

The right to propose an ordinance or resolution shall be exercised by filing with the auditor a petition in proper form containing the proposed ordinance or resolution, signed by the required number of qualified voters of the county. The signer or circulator of the petition shall add the signer's place of residence and the date of signing. The signer's post office box number may be given in lieu of a street address if the signer lives within a municipality of the second or third class. A date may be written in full or may be written using standard abbreviations, including numerals. (SDCL 7-18A-11) Each person who has circulated a petition shall, before filing the petition, sign an affidavit, under oath, verifying that he circulated the petition and that either he or the signer added the signer's place of residence and date of signing. If multiple sheets of paper are necessary to obtain the required number of signatures, each sheet shall be self-contained and separately verified by the circulator. (SDCL 7-18A-12) When a petition to initiate is filed with the auditor, he shall present it to the board of county commissioners at its next regular or special meeting. The board shall enact the proposed ordinance or resolution and shall submit it to a vote of the voters in the manner prescribed for a referendum within sixty days after the final enactment. However, if the petition is filed within three months prior to the primary or general election, the ordinance or resolution may be submitted at the primary or general election. (SDCL 7-18A-13) No initiated ordinance or resolution shall become operative unless approved by a majority of the votes cast for and against the same. If so approved, it shall take effect upon the completion of the canvass of the election returns relating thereto. (SDCL 7-18A-14)

Any ordinance or resolution adopted by a board of county commissioners may be referred to a vote of the qualified voters of the county by the filing of a petition signed by five percent of the registered voters in the county, based upon the total number of registered voters at the last preceding general election, except such ordinances and resolutions as may be necessary for the immediate preservation of the public peace, health, or safety, or for the support of the county government and its existing public institutions. (SDCL 7-18A-15) Any legislative decision of a board of county commissioners is subject to the referendum process. A legislative decision is one that enacts a permanent law or lays down a rule of conduct or course of policy for the guidance of citizens or their officers. Any matter of a permanent or general character is a legislative decision. No administrative decision of a governing body is subject to the referendum process, unless specifically authorized by this code. An administrative decision is one that merely puts into execution a plan already adopted by the governing body itself or by the Legislature. Supervision of a program is an administrative decision. Hiring, disciplining, and setting the salaries of employees are administrative decisions. (SDCL 7-18A-15.1) A petition to refer an ordinance or resolution subject to referendum may be filed with the auditor within twenty days after its publication. The filing of such a petition shall require the submission of any such ordinance or resolution to a vote of the qualified voters of the county for its rejection or approval. (SDCL 7-18A-16) A special election shall be held within sixty days after the filing of a petition under § 7- 18A-15. However, if the petition is filed within three months prior to a primary, general, or statewide special election, the ordinance or resolution may be submitted at the primary, general, or statewide special election. (SDCL 7-18A-19) The auditor shall have the entire referred ordinance or resolution published once a week for two successive weeks immediately preceding the election. Such publication shall include a notice stating the day of election on which the ordinance or resolution will be submitted to the voters. If only a portion thereof is covered by the petition, the notice will state what portion will be submitted. (SDCL 7-18A-20) No referred ordinance or resolution shall become operative unless approved by a majority of the votes cast for and against the same. If approved, it shall take effect upon completion of the canvass of the election

returns relating thereto. (SDCL 7-18A-22) No question contained in a referred or initiated ordinance or resolution may be voted upon again within one year from the date of the election thereon. (SDCL 7-18A-24)

After an ordinance takes effect, the auditor shall record it with a certificate of the date of its publication in a book to be known as the "Ordinance Book" and shall file the affidavit of publication with the original ordinance. (SDCL 7-18A-25) All county ordinances in effect on July 1, 1975, shall become void unless, prior to July 1, 1978, they have been compiled and published in book form as provided in § 7-18A-27. (SDCL 7-18A-26) Every county shall have power to compile its ordinances without revision or amendment, not more often than once in five years, for publication in book form. The compilation shall be effective without the publication required for ordinances. (SDCL 7-18A-27) Each board, not more often than once every five years, may appoint a committee of one or more competent persons to prepare and submit for its consideration an ordinance which revises the ordinances of the county. (SDCL 7-18A-28)

Actions for violations of county ordinances shall be civil cases and the county shall be the plaintiff. The actions shall be commenced by the filing of a complaint and the response thereto shall be by oral plea or written answer. Conduct for the trials of violation of county ordinances and resolutions shall be governed by the procedure used in all proceedings for violations of ordinances and bylaws of units of local government of this state as referred to in § 23A-1-1. If the procedure does not cover or apply to a specific portion of the proceeding, the rules of civil procedure apply. (SDCL 7-18A-32) All fines, penalties, and forfeitures collected for violations of a county ordinance, resolution, or charter shall be distributed in accordance with § 16-2-34. (SDCL 7-18A-35)

No county may pass any ordinance that restricts possession, transportation, sale, transfer, ownership, manufacture, or repair of firearms or ammunition or their components. Any ordinances prohibited by this section are null and void. (SDCL 7-18A-36)

Any board or county commissioners may set the speed zones upon all or any part of the highways under its jurisdiction and upon streets and highways on the request of and after any other local authority having charge of the maintenance thereof has declared its intention to post speed zones.

3.003 Powers of the County Board Not Exercised by Individual Members

The board of county commissioners shall hold its sessions as an open meeting and transact all business in a public manner. Meetings shall normally be held at the court house or at the usual place of holding court; however the board may occasionally hold its sessions at any other suitable place at the county seat or at other locations within the geographic county area if the meetings are held in a public place and if notice of the meeting is published once a week for at least two successive weeks before the meeting in the legal newspaper or newspapers of the county in which the meeting is to be held. Joint county-municipal planning sessions may be held at any suitable location within the county. All matters pertaining to the interests of the county shall be heard by the board in session only, but it may continue any business from any regular session to an intermediate day. (SDCL 7-8-16) This restriction led the South Dakota supreme Court to conclude that the power of the county boards must be exercise by them as boards and not as individuals, and the county is not bound by an action taken by members of the board individually. (Brown County v. Zerr, 67 SD 516, 295 NW 289 (1940)

3.004 Implied Powers of the Board

On the question of whether or not the county board could exercise only those powers expressly conferred by statute or might imply certain others from them, the South Dakota Supreme court has held

that the county commissioners are also vested with the powers reasonably necessary to the exercise of the expressed powers (Pearson v. Johnson, 59 SD 163, 238 NW 644 (1931)

3.005 Appeal from Decisions of Board

From all decisions of the board of county commissioners upon matters properly before it, there may be an appeal to the circuit court by any person aggrieved upon filing a bond in the amount of two hundred fifty dollars with one or more sureties to be approved by the county auditor conditioned that the appellant shall prosecute the appeal without delay and pay all costs that he may be adjudged to pay in the circuit court. Such bond shall be executed to the county and may be sued in the name of the county upon breach of any condition therein. (SDCL 7-8-27) Such appeal shall be taken within twenty days after the publication of the decision of the board by serving a written notice on one of the members of the board, when the appeal is taken by any person aggrieved by the decision of the board, and upon the person or persons affected by the decision of the board when the appeal is taken by the state's attorney; and the county auditor shall upon the filing of the required bond and the payment of his fees, which shall be the same as allowed registers of deeds for like services, make out a complete transcript of the proceedings of the board relating to the matter of its decision and deliver the same to the clerk of courts. (SDCL 7-8-29) Such appeal is determined in the same manner as if commenced as an original action in the circuit court by service of a summons (Champion v. Board of County Commissioners, 5 Dak. 416, 41 NW 739 (1889)). The circuit court may make a final judgment and cause the same to be executed or may send the same back to the board of county commissioners with an order how to proceed, and require such board to comply therewith by mandamus or attachment as for contempt. (SDCL 7-8-31)

Upon written demand of at least fifteen taxpayers of the county, the state's attorney shall take an appeal from any action of such board if such action relates to the interests or affairs of the county at large or any portion thereof, in the name of the county, if he deems it to the interest of the county so to do; and in such case no bond need be required or given and upon serving the notice provided for in § 7-8-29, the county auditor shall proceed the same as if a bond had been filed and his fees for making the transcript shall be paid as other claims by the county. (SDCL 7-8-28; Lyman County v. Board of County Commissioners 14 SD 341, 85 NW 597 (1901)). When the county board is acting as the county board of equalization no appeal may be taken by the states attorney upon a taxpayers petition. (Beadle County v. Board of County Commissioners, 62 SD 86, 251 NW 816(1930))

3.006 Petitions Presented to the Board

Many of the statutes require the submission of proper petitions to institute action. The statute generally specifies the number of signatures, time of filing and related matters. When a proper petition has been presented to the county board for any purpose, no one who has signed the petition may withdraw his name after that governing body has finally acted upon the petition. The certificate of final action is made by the county auditor. (AGR 1925-26, p. 282)

3.007 Designation of Official newspaper

No publication is a legal newspaper for publishing legal and other official notices unless, for at least one year prior to publication of such notices, the publication is printed in the English language and contains at least four pages per issue, with at least one hundred twenty square inches of printed matter per page; and if the publication is a daily, is distributed at least five days each week, or if not a daily, is

distributed at least once each week for at least fifty weeks each year. In any week in which there is a legal holiday, no more than four issues of a daily newspaper are necessary. (SDCL 17-2-2.1)

A legal newspaper shall, for at least one year prior to publication of legal and official notices, maintain a definite price of not less than fifty percent of its published price, and shall be paid for by no less than fifty percent of those to whom it is distributed. Such legal newspaper shall have a minimum paid circulation of at least two hundred and be intended for distribution and circulation to the general public, without regard to business, trade, or profession. (SDCL 17-2-2.2)

A legal newspaper shall contain reports of happenings of recent occurrences of a varied nature, such as political, social, moral, and religious subjects and miscellaneous reading matter, and for at least one year prior to publication of legal and official notices devote at least twenty-five percent of its total column space in at least one-half of its issues in any calendar year to such nonpaid news content. No more than eighty percent of the space devoted to such news content may duplicate any other publication, unless the duplicated material is from recognized general news services. SDCL 17-2-2.3)

At its regular meeting in January of each year the board of county commissioners shall designate three legal newspapers printed in the county as official newspapers. If there are not three legal newspapers within the county, then as many newspapers that are legal newspapers. The board shall publish a full and complete report of all its official proceedings at all regular and special meetings and shall publish proceedings as soon after any meeting as practicable. The board shall pay for publishing the proceedings at a rate not to exceed ninety percent of the legal line rates for weekly newspapers and not to exceed the legal line rate for daily newspapers, as provided in chapter 17-2. All notices required by law to be published by the county auditor shall also be published in the official newspapers. If any notice includes a legal description of property outside the incorporated limits of a municipality, the notice may include a physical description of the property from the nearest incorporated municipality. (SDCL 7-18-3) The editor, publisher, or foreman of each official newspaper, shall file or cause to be filed with the county auditor an affidavit of publication, executed in due form, of all legal official publications so made; provided, however, that not more than two newspapers within the same municipality shall be so designated, if there are other legal newspapers published elsewhere within the county. (SDCL 7-18-4)

A newspaper pre-produced by the photo-offset process instead of typesetting and operation of a printing press is within the definition of “printing”. If the other statutory requirements are met, such newspapers are eligible as official or legal newspapers. (AGR 1953-54 p. 223; 1955-56, pp. 319,321)

3.008 Publication of Proceedings of meetings and Legal Notices

It shall be the duty of the county auditor to make a full and complete report of the proceedings of each regular and special meeting of the board, and to transmit the same to the publishers of the official newspapers. Such report shall be made out and transmitted within one week from the time such meeting is held. (SDCL 7-8-5) If the commissioners can approve the auditor’s report in time for him to transmit the same to the publishers of the official newspapers of the county within one week of the time of the holding of such meeting, they may approve the minutes of the meeting before publication. (AGR No. 71-17) The county board pays for publishing such proceedings, as provided in SDCL Chapter 17-2 and SDCL 7-18-3.

If any legal publication of anything is required or allowed by law, and no other fee is prescribed for that publication, the Bureau of Administration shall establish, by rules promulgated pursuant to chapter 1-26, the maximum fee which may be charged for the publication. The bureau shall annually review and adjust rates to reflect changes in economic conditions within the newspaper industry and the general

economy. The bureau shall consult with representatives of the daily and weekly newspaper industry and with representatives of local units of governments. (SDCL 17-2-19)

The county auditor shall, on or before the first day of October of each year when there is a general election, mail to each official newspaper of the county a copy of all measures and questions as certified to him pursuant to § 12-13-1. SDCL 12-13-2) It shall be the duty of each official newspaper of the county to publish once not less than two nor more than four weeks prior to each general election full copies of that material supplied pursuant to § 12-13-2, and for such publication such newspaper shall receive compensation at the legal rate prescribed by law to be paid out of the general fund. In case any official newspaper shall fail or refuse to make such publication as hereinbefore provided, such newspaper shall thereupon cease to be an official newspaper for the remainder of that year and for the following calendar year, and the board of county commissioners of such county shall appoint some other newspaper of such county as an official newspaper. The refusal of an official newspaper or newspapers to publish shall not invalidate the results of an election on such question. (SDCL 12-13-3)

All public officers of the state, counties, townships, municipalities, and school districts who are required by law to publish legal notices of financial statements and who shall intentionally fail or refuse to make such publications, commits a petty offense and also shall be guilty of nonfeasance of office and subject to forfeiture of salary for the month in which such failure occurs, whichever penalty is greater. Such officers shall be subject to removal from office upon continuance of such neglect of duty. Suits to enjoin or recover payment of salary and for removal from office under this section shall be instituted in the proper circuit court by the state's attorney of the county in which the offending officer resides. (SDCL 4-10-11)

Notwithstanding the provisions of §§ 7-18-3, 9- 18-1, and 13-8-35, the boards of county commissioners, the governing board of each municipal corporation, and school boards shall publish with the minutes of the first meeting following the beginning of the fiscal year, or within thirty days thereafter, or in the minutes of the first meeting following the completion of salary negotiations with employees for that fiscal year, or within thirty days thereafter, a complete list of all the salaries of all officers and employees and thereafter shall publish once any salary paid to any officer or employee who has been added or whose salary has been increased. The governing board shall publish, in their minutes, at least monthly, a total of payroll by department. (SDCL 6-1-10)

3.009 Duty to Provide Bulletin Board

The county commissioners of each county shall provide a bulletin board which is adequate for the posting of legal notices. The bulletin board shall be located either at the entrance to the county courthouse or in one of the corridors of the courthouse commonly used by the public. If a county does not have a county courthouse, or maintains a separate building for the courts and their clerk, the bulletin board shall be located in one of the most public places in the county. In either event, the exact location where the bulletin board is to be maintained shall be designated and established by resolution of the board of county commissioners. (SDCL 17-3-1) Whenever by statute or rule, the posting of any notice or court order is required as a manner and method of giving notice, it shall be sufficient compliance, unless the context of such statute or rule otherwise plainly requires, to post a copy of such notice or order upon the bulletin board designated pursuant to § 17-3-1 and no additional postings need be made. The posting provided by this section shall be made by an elector of the State of South Dakota.

(SDCL 17-3-2) If a notice posted pursuant to § 17-3-2 was posted on a bulletin board in or at a public building maintained in whole or in part by the county or utilized by the courts, and the building was commonly used by the public, then despite the absence of the designation of the bulletin board by the county commissioners or the designation by them of a bulletin board at a public place other than the county courthouse, such posting is hereby validated and legalized and is of the same force and effect as though it had been posted on a bulletin board designated in the manner specified by § 17-3-1. (SDCL 17-3-6)

3.010 Purchase Advertising Time for Public Announcements

Any office, agency, board, or commission of this state or any of its counties, townships or municipalities is hereby authorized to purchase radio and television advertising time to broadcast any announcement found to be in the public interest. (SDCL 1-25A-1) Nothing in § 1-25A-1 shall authorize the purchase of radio and television advertising time to broadcast any legal notice which is required to be given by law, nor shall it be construed to give radio and television legal publication status. (SDCL 1-25A-2)

3.011 Power of Eminent Domain

The board of county commissioners is authorized to condemn private property for public purposes in the manner and to the extent hereinafter provided. Whenever the board of county commissioners shall deem it necessary to condemn private property for the purpose of opening, constructing, changing, relocating, maintaining, repairing, or extending any highway or bridge within its county, or for the purpose of erecting, repairing, or extending any courthouse, jail, or other public building, and of acquiring other or additional ground therefore, or for the purpose of providing cut slopes, borrow pits, or channel changes, or to afford unobstructed vision on said highways in said county at any point of danger to public travel, for right- of-way and borrow pit, or for the purpose of making any other public improvement or to acquire private property for any public use authorized by law, such board shall by resolution and order declare such appropriation necessary to be made, stating the purpose thereof and the extent of such appropriation, and thereupon proceedings for such condemnation and appropriation shall be had as provided by law. Nothing herein shall be construed as authorizing county commissioners to condemn property for county courthouse or jail site until a majority of the voters of a county shall have voted in favor of the erection of a courthouse or jail. (SDCL 7-18-9)

3.012 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 stated 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. Minnehaha County, 69 SD 164, 7 NW2d 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 and liability or action under the common law. (AGR 1953-54, pp. 288-289)

Damage suits against the county have been authorized by statute under a few circumstances. To illustrate, liability may occur for failure to provide for certain highway safety guards and negligent

maintenance and repair of designated highways when injuries are sustained. (SDCL 31-23-11; AGR 1947-48, p.357)

When the county commissioners or any other county officers are sued as individuals on matters pertaining to county affairs but not their official capacities, county funds may not be used to pay cousel fees or a private attorney. (AGR 1955-56, p. 279)

3.013 Power to Obtain Liability Insurance

The 1986 state legislature established a public entity pool for liability insurance for counties and all other government entities. Statutes involved are in chapter 3-21 and 3-22. Sovereign immunity and insurance can be found in Chapter 21-32A.

In the absence of a statute to the contrary, no action lies against a county for negligence of its officers, agents or employees. The question of the county board's power to obtain liability insurance for the county and its employees has been an important legal issue. Where the statutes impose specific liability on the county for the negligence of its agents, the courts have frequently allowed judgments against the county. The county commissioners may provide money out of county funds for Workmen's Compensation Insurance for county employees. (AGR 1945-46, p39)

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. (SDCL 7-18-8) In the interpretation of the latter statue, the county commissioners, county highway superintendents and other county officers are not included in the term "employees" as used in the above provision. County officers are to be distinguished from employees (AGR 1949-50, pp. 354-356). Advertising for bids is not required when public corporations purchase insurance. (AGR 1953-54, pp.99-100)

Each county is a body corporate for civil and political purposes only and as such may sue and be sued, plead and be impleaded, in any court in this state. (SDCL 7-18-1; Jerauld county v. Saint Paul-Mercury Indemnity, 76 SD l, 71 NW2d 571 (1955)).

In cases where there is not liability against a political unit, the general rule in the absence of a statute authorizing the purchase of liability insurance from public funds is that such expenditure is not authorized. However, if such insurance is necessary as an integral part of the employment contract so as to obtain and keep competent employees and accomplish the work of a particular department, then the expenditure may be made in the absence of an authorizing statute. (AGR 1945-46, p. 292; 1955-56, pp. 298-299)

3.014 Duties of the Board in the Establishment of Election Precincts

B y resolution the commissioners must provide for election precincts throughout their county and designate polling places within each precinct and shall establish new election precincts when required by SDCL 12-14 or SDCL 2-2-12. The board of county commissioners shall by resolution provide for election precincts throughout its county and shall designate polling places within such precincts. The board shall establish new election precincts if required by the provisions of this chapter and may by resolution change the boundaries of election precincts already established. The county auditor shall be able to provide separate lists of voters living within the boundaries of each municipality, ward, school district, and any other special voting district. (SDCL 12-14-1) It shall be the duty of officials in charge of

local elections to notify the county auditor at least thirty days preceding their local elections, of the precinct boundary changes if any have been made. (SDCL 12-14-1.1) The resolution of the board of county commissioners establishing new precincts or making any change in precincts already established shall clearly set forth and define the boundaries of the election precincts established or altered. (SDCL 12-14-2)

In all precincts the board of county commissioners shall adjust the size of any precinct at which there was unreasonable waiting time imposed upon the voters at the last preceding general election. Under ordinary circumstances, more than thirty minutes waiting time is deemed unreasonable waiting time except at the time when the polls close. (SDCL 12-14-4)

At each election to be held under this title, the polls shall be opened at the hour of seven a.m. and remain continuously open until seven p.m., standard time or daylight savings time, whichever is in effect. However, no polling place may be closed at any election until all the voters who have presented themselves at the polling place inside or outside for the purpose of voting prior to the time of the closing of the polls have had time to cast their ballots. (SDCL 12-2-3) No public disclosure of the returns of state and federal elections in any primary or general election is permitted until each precinct polling place in the state is closed. This provision applies to each precinct polling place within the state. (SDCL 12-20-17)

No person may engage in any practice which interferes with the voter's free access to the polls or disrupts the administration of the polling place, or conduct, on the day of an election, any exit poll or public opinion poll with voters within one hundred feet of a polling place. In addition, no person may display any campaign material in a county courthouse during the six weeks prior to and including elections day, and no political party may maintain an office in a county courthouse.

Any county may create a special precinct to be known as an absentee ballot precinct. If the county creates an absentee ballot precinct, all absentee ballots cast at any election shall be counted in such precinct. However, if a paper ballot precinct has ten or fewer absentee ballots cast at the time the polls open on Election Day, the absentee ballots in that precinct shall be counted at the polling place. The election board of the absentee ballot precinct is the absentee ballot counting board. There may be only one absentee ballot counting board at any time in a county. (SDCL 12-19-37) The county auditor shall appoint the absentee ballot counting board in the manner prescribed in chapter 12-15, except that the number of election officials on the absentee ballot counting board shall be sufficient to complete the counting of ballots within a reasonable time. (SDCL 12-19-38)

3.015 Duties of election Canvassing and County Recount Boards

Within six calendar days after the close of any election, the officer in charge of the election, with the assistance of a majority of the governing board as the canvassing board, shall make the canvass of votes. Each member of the governing board may name and have on file with the officer in charge of the election a person to represent the member at the official canvass in the event of the member's absence for cause. (SDCL 12-20-36) The Board of Canvassers for both primary and general elections shall at the time provided by § 12-20-36 proceed to open the returns from the various voting precincts in the county and make abstracts of the votes cast for each of the candidates and each of the issues. Each of the abstracts of the votes made shall be signed and certified by the canvassers, under the seal of the county auditor, and be deposited in the office of the auditor. (SDCL 12-20-38) The county auditor has several duties involving the count y canvass of votes.

The county canvassing board, as soon as the returns of any primary election are canvassed, as provided in chapter 12-20, shall issue and mail to each person whom the returns show nominated for any county office, a certificate of nomination. The county canvassing board shall certify the names of

such nominees to be printed on the official ballot at the succeeding November election. The board shall issue and mail a certificate of election to each person whom the returns show elected as party precinct committeeman or committeewoman, delegate or alternate to the state convention. The certificate shall be duly executed by said county canvassing board under the seal of the county. The county canvassing board shall similarly certify the election of the delegates and alternates to the state convention to the state political parties. (SDCL 12-8-1)

Any candidate who has been duly nominated to an elective office except State Legislature, political or nonpolitical, having no opposing candidate at the general election shall automatically be elected and the county auditor or secretary of state, as the case may be, shall, following the official canvass, issue a certificate of election to such candidate and his name shall not be printed on the general election ballot. (SDCL 12-16-1.1)

The county recount board of each county which conducts a recount authorized by this chapter shall consist of a recount referee and two voters of the county to be appointed by the presiding judge of the circuit court for that county, and shall provide for representation of the two political parties with the largest party registration in that county. The recount referee shall be a duly qualified member of the bar of the State of South Dakota and a member of the political party which polled the largest number of votes for Governor in the county in the last gubernatorial election. Prior to serving, each member of the recount board shall take an oath that the member will act in good faith and with impartiality. The state board of elections shall prescribe the oath to be taken. (SDCL 12-21-2) The recount referee shall receive compensation in the same amount as court appointed counsel and the other two members so appointed to the recount board shall each receive compensation in the amount of twenty- five dollars per day or in an amount equal to the state minimum hourly wage, whichever is the greatest. (SDCL 12-21-4) Whenever a petition for recount is filed with the county auditor for an election which has been canvassed by the State Board of Canvassers, the county auditor shall notify the secretary of state of the petition for recount. (SDCL 12-21-11.1)

In addition to the actual recount of ballots, the county recount board also rules on the validity of the ballots over which a dispute arises. (SDCL 12-21-23; AGR 1957-58, p. 128)

The county auditor shall immediately transmit by mail, fax, or electronic means to the secretary of state a certified copy of the official county canvass of votes prepared pursuant to § 12-20-38 which shall be used for the official state canvass. The certified copy shall bear a visible county seal. If the copy is faxed or sent by electronic means, the original certified copy shall also be mailed or hand delivered to the secretary of state. The certified copies shall be microfilmed to become permanent records of the State of South Dakota and be kept by the secretary of state. (SDCL 12-20-38.1) Whenever a petition for recount is filed with the county auditor for an election which has been canvassed by the State Board of Canvassers, the county auditor shall notify the secretary of state of the petition for recount. (SDCL 12-21-11.1)

In the case of a recount as to any local election, it shall be the duty of the county recount board forthwith to recanvass the official returns as corrected by the certificate showing the result of the recount, and to make a new and corrected abstract of the votes cast as to such office, nomination, position, or question, which corrected abstract shall be signed by at least two members of said board and filed as a public record in the office of the county auditor and a certified copy of the certificate shall be transmitted to the officer in charge of that election. (SDCL 12-21-36)

3.016 Control of Election Officials

The county auditor shall, not less than twenty days before any election, appoint a precinct superintendent and two precinct deputies who shall constitute the precinct election board and a

precinct superintendent and two precinct deputies of the counting board if the board is appointed pursuant to § 12-15-14 or 12-15-14.1 for each of the voting precincts of the county. Two or four additional precinct deputies may be appointed. The county auditor shall make the appointments from lists of names submitted by the county central committee of each party. If the county auditor fails to receive the list at least forty-five days prior to an election, the county auditor shall make the appointments. (SDCL 12-15-1)

In the appointment of the members of the precinct election board and of the counting board pursuant to this chapter, if three or more parties have candidates on the official ballot, one precinct deputy shall be appointed from each party whose candidate for Governor in the last gubernatorial election had at least fifteen percent of the votes as shown by the precinct returns. If two parties have candidates on such ballots, the members of the precinct election board shall be selected from each party and the party receiving a majority of the votes cast for Governor in the election precinct at the last preceding gubernatorial election shall have a majority of the members of the precinct election board. The precinct superintendent shall belong to the party whose candidate received the most votes for Governor in the last gubernatorial election in that precinct. If a precinct has been created since the last election, the precinct superintendent shall belong to the party which received the most votes for Governor in the county in the last gubernatorial election. If no list is provided by a party's county central committee pursuant to § 12-15-1, any registered voter who is not affiliated with a party as provided in this section may be chosen as a precinct election board member for the party which did not submit the list within time frame specified in § 12-15-1. (SDCL 12-15-3)

Prior to each general or primary election, each county auditor, assisted by the state's attorney, shall call together the superintendents from each of the precincts in the county, and any precinct deputy as the county auditor may deem appropriate, at some convenient time and place and instruct them on the election laws and the duties of the precinct superintendent and precinct deputies. Any person who is called to the meeting and who attends the meeting shall be paid a fee fixed by the board of county commissioners of not less than five dollars for attending the meeting. (SDCL 12-15-7)

Each precinct superintendent and precinct deputy shall receive a fee to be established annually by resolution of the board of county commissioners at its first regular meeting each year. The person delivering the poll books and ballot boxes to the proper authority at the county seat shall receive the county rate for mileage as established pursuant to § 7-7-24, for miles necessarily traveled in going to and returning from making the delivery. (SDCL 12-15-11)

The county auditor shall, on the receipt of the returns of any primary, general, or special election make out a certificate stating the fee that each precinct superintendent and precinct deputy is entitled. The county auditor shall submit the certificate to the board of county commissioners at its next session. The board shall order the fee to be paid out of the county treasury. (SDCL 12-15-13)

In each election precinct in which the number of ballots to be voted on paper ballots, including absentee ballots, has in prior general elections exceeded three hundred voters, the auditor shall appoint a precinct counting board to be composed of five precinct deputies, one of whom shall be superintendent, who shall count the ballots cast in the general election under the direction of the superintendent of the counting board. (SDCL 12-15-14)

Notwithstanding § 12-15-14, the county auditor may appoint counting boards in those precincts where the number of ballots to be voted on paper ballots, including absentee ballots, has in prior elections unreasonably delayed the completion of the ballot count even though the total number of ballots cast in prior elections did not exceed three hundred voters. (SDCL 12-15-14.1)

3.017 Voting machines

Repealed information

3.018 Electronic Voting System

Repealed information

3.019 Consolidation and Change of County Boundaries

If fifteen percent of the registered voters, based upon the total number of registered voters at the last preceding general election, of each of two or more adjoining counties of this state, petition the board of county commissioners of their respective counties for an election to determine the question of changing the boundary lines or of the consolidation of two or more counties, stating in such petition the names of the counties to be consolidated or boundary lines to be changed, such boards of county commissioners shall at their regular July meeting succeeding the presentation of such petitions provide that the question of consolidation of the counties or the changing of the boundary lines of such counties shall be submitted to a vote at the next general election succeeding the presentation of such petitions. The petitions shall be filed with the county auditors of such counties prior to the first day of the regular July meeting of the board of county commissioners. The auditor of each county where any such petition has been filed shall transmit to the auditor of the other county or counties affected thereby a certified copy or copies of the petition or petitions filed in his county. (SDCL 7-2-1)

In any case where a municipality in this state is so situated that its boundaries extend into, and its area is a part of two or more adjoining counties of the state, the governing body of such municipality shall, upon petition signed by fifteen percent of the voters of such municipality, submit at a special or regular municipal, or general election held therein, the question of whether or not it is desirable that the boundaries of the counties affected should be changed so as to include all of the area of such municipality within the boundaries of one of such counties. The voters at such election shall also indicate their choice of which county such municipality should be a part. (SDCL 7-2-16)

If a majority of the voters of such municipality are in favor of the change, the auditor or clerk of such municipality, shall certify the result of such election to the county auditor of each county affected, and thereupon the county commissioners of each of such counties shall, at their regular July meeting succeeding the presentation of such certificate, provide that the question of change of the boundary lines of such counties shall be submitted to a vote at the next general election, as provided in § 7-2-1. The filing of the certificate of the auditor or clerk of the municipality herein provided for, shall be in lieu of the petition required by § 7-2-1. (SDCL 7-2-17) submission of this question to the electorate by the county board is mandatory and may not be done at the discretion of the board (State ex rel. Williams v. Bateman, 60 SD 320, 244 NW 357 (1932)). Moreover, the county commissioners of two counties cannot agree by a joint resolution to establish a different boundary line between two counties that is fixed by law. (AGR 1915-16, p. 1948)

If at any election held under the provisions of this chapter, a majority of all the votes cast at such election in each of such counties shall be in favor of consolidation of two or more counties or the changing of the boundary lines of such counties, they shall be declared consolidated or changed as hereinafter provided. (SDCL 7-2-3) Any new county formed pursuant to this chapter shall take the name of the senior county and the location receiving the highest number of votes, cast at such election in the two or more counties for the county seat of the consolidated county shall be the county seat of such new county. (SDCL 7-2-7) If the result of such election is in favor of consolidation or change of boundaries, such consolidation or change of boundaries shall be in full force and take effect on the first day of January next after the general election held succeeding the proclamation as provided in § 7-2-4.

(SDCL 7-2-5) There shall be elected in each new county at the next general election succeeding the proclamation by the Governor, one set of county officers for such new county. (SDCL 7-2-10)

3.020 Establishment of Commissioner Districts After Consolidation or Boundary Change

The board of county commissioners of each of such counties shall, after the proclamation of consolidation by the Governor, meet in joint session at the office of the county auditor of the county seat of one of such counties on the first Monday in July succeeding such proclamation and proceed to divide each new county into five commissioner districts, numbering them consecutively, complying as nearly as possible with the provisions of the law regulating the districting of counties into commissioner districts. Such commissioner districts so established and the boundaries so fixed shall remain as established and fixed until the same may be changed as provided by law. At the next general election there shall be elected a commissioner for each district, each of whom shall be so chosen for two or four years as that the regular term of his successor shall thereafter conform to the requirements of law. (SDCL 7-2-8) Whenever the area of any county in this state has been altered by the changing of the boundaries, it shall be the duty of the board of county commissioners of such county, at the first regular meeting thereafter, to establish commissioner districts in such county and fix the boundaries thereof in the manner provided by law for establishing commissioner districts and changing the boundaries thereof insofar as the same is applicable. Such commissioner districts so established and the boundaries so fixed shall remain as established and fixed until the same may be changed as provided by law. (SDCL 7-2-13)

3.021 Records of Consolidated Counties

Whenever an organized county shall be divided, it shall be the duty of the board of county commissioners of such newly organized county at once to secure a full, true, and complete transcript of such records of the original county as may relate to, or in any manner affect, property rights or interests within such newly organized county and, when such records are transcribed and certified to as hereinafter provided, they shall have the same force and effect as though originally filed and recorded in such newly organized county and as the records of such original county, and shall be received in all courts in evidence with the same force and effect as such original records. (SDCL 7-3-17)

The property of each of such consolidated counties shall after consolidation become the property of the new county. The indebtedness, if any, of each of such counties shall after consolidation be paid out of the taxes levied on the property in the respective territory of the county having contracted the same. (SDCL 7-2-12) Where the boundaries of two or more counties have been changed, pursuant to the provisions of this chapter, and the county or counties from which area has been detached has indebtedness charged against such detached area, all levies of taxes, and special assessments, theretofore made against such lands so detached, for the purpose of retiring such indebtedness, shall be continued and collected by the county to which such area is attached, and paid over to the county from which such area is detached until such indebtedness is fully retired. (SDCL 7-2-15)

3.022 Powers and Duties in Division of Counties

If fifteen percent of the registered voters, based upon the total number of registered voters at the last preceding general election, residing in any portion consisting of not less than twenty-four congressional townships or any portion consisting of not less than one hundred million dollars of real property valuation of any organized county in this state shall petition the county commissioners of such county for division thereof and for the organization of a new county or counties, setting forth in the

petition the lines upon which the petitioners desire such county to be divided and the boundaries of the proposed new county or counties, together with the name or names they desire to be given the proposed new county or counties in which such petitioners reside, the county commissioners of such county shall submit the question of the division of such county to the voters thereof at the next general election. Such petition must be filed with the county auditor not later than the first Monday in July of any general election year. Each county shall, after division as prayed for in such petition, contain not less than twenty-four congressional townships or not less than one hundred million dollars of real property valuation, or no election may be ordered. (SDCL 7-3-1) If a majority of the votes cast at the next general election in such county, and also in each portion thereof proposed to be organized into a new county, shall be favorable to a division of such county, the portion in which the county seat thereof is located shall retain the name and organization of such county and the portion or portions in which the county seat is not located shall take the name or names prayed for in the petition for the division of the county, and the Governor shall forthwith proceed to organize the same as a county or counties under such name or names in the manner provided by law for organizing an unorganized county and, until such organization is perfected, the said portion or portions of such county shall for all governmental purposes remain and be a portion of such original county. (SDCL 7-3-2) Whenever the area of any county in this state has been altered by division or by the changing of its boundaries, it shall be the duty of the board of county commissioners of such county, at the first regular meeting thereafter, to establish commissioner districts in such county and fix the boundaries thereof in the manner provided by law for establishing commissioner districts and changing the boundaries thereof insofar as the same is applicable. Such commissioner districts so established and the boundaries so fixed shall remain as established and fixed until the same may be changed as provided by law. Whenever the organization of a new county results from such alteration, the same duty shall devolve upon the commissioners of the new county. (SDCL 7-3-3)

3.023 Financial Settlement in Divided County

Any bonded indebtedness of such original county shall be apportioned to each division ratably upon the basis of the last equalized assessment previous to the division thereof and each of such divisions shall be charged with, assume, and pay its just portion of such debt upon the basis of such apportionment; and each new division shall, as soon as organized as a county, issue its bonds to meet its portion of such bonded debt. Such bonds shall be made payable to the original county, shall bear the same rate of interest, be of similar tenor, and shall mature on the same date as the outstanding bonds of the original county on account of which the bonds of the new county are issued. The county commissioners of each new county shall annually levy and collect a tax to pay the interest on the bonds issued hereunder as it shall accrue and to meet and discharge the principal thereof at maturity, and the original county shall retain such bonds and not be allowed to dispose of or sell the same. (SDCL 7-3-4) Whenever a new county is organized or created out of an organized county in this state or in counties which have heretofore been divided and the liabilities and assets of the county as it existed prior to the division thereof have not been apportioned and divided by the board of county commissioners of the original county and the newly organized portion thereof, it shall be the duty of the auditor-general of this state, either by himself or his duly authorized assistant, forthwith to make an inventory of all of the assets and liabilities of such original county and such new county or counties and estimate the value and amount of such assets and liabilities. After notice to the county commissioners of the counties affected, it shall be the duty of the auditor-general or his assistant to apportion the liabilities and assets of such counties in the manner provided by law for the apportionment of bonded indebtedness. (SDCL 7-3-7) Any county affected by such apportionment as provided in § 7-3-7, at any time within thirty days after

the report of the auditor-general has been filed, may bring its action in equity in the circuit court of such county for the purpose of setting aside such apportionment and causing an apportionment to be made between the counties affected. The estimate and appraisement of the auditor-general shall be prima facie evidence of the facts and values therein stated and shall be admissible in evidence. (SDCL 7-3-9) It shall be the duty of the boards of county commissioners of such counties at their next regular meeting after the expiration of thirty days from the filing of the report of the auditor-general, to issue warrants upon the several funds to the creditor county to pay any amounts ascertained by the auditor-general to be due; or, in case the report of the auditor-general is set aside, warrants shall be issued as herein provided within thirty days after the entry of final judgment in such matter. (SDCL 7-3-11) For the work herein provided, the auditor-general shall be paid at the rate and in the manner fixed by law for such auditor-general, and the expense of making such apportionment shall be charged to each of the counties and the amount thereof apportioned to each county ratably upon the basis of the last equalized assessment previous to the division. It shall be the duty of the officers of the proper counties immediately after such service has been rendered to issue warrants therefore as provided by law in other cases. (SDCL 7-3-12)

3.024 Distribution of Records of a Divided County

Whenever an organized county has been or shall be divided and a division of the books, records, and files has not been made, it shall be the duty of the county commissioners of the new county or counties to procure from the original county, and it shall be the duty of the proper officers of the original county to surrender, all the books, records, and files of the several offices which relate exclusively to school districts, townships, and municipalities located within the territory embraced within such new county or counties. Such commissioners shall further procure, and it shall be the duty of the proper officers of the original county to surrender, all books, records, and files of the original county which in any manner affect exclusively property rights or interests in such new county or counties. (SDCL 7-3-13)

3.025 Location of County Seat

If upon a canvass of the votes cast, as provided in § 7-6-2, any municipality shall have received a majority of all votes cast at such election, the question of location of the county seat shall not again be submitted before the expiration of four years; provided that where such vote has already been had without a choice of location, the question of location of the county seat shall not again be submitted until the expiration of four years from the last election held therefore. (SDCL 7-6-3) If fifteen percent of the registered voters, based upon the total number of registered voters at the last preceding general election, of any organized county petition the board of county commissioners to change the location of the county seat which has once been located by majority vote, specifying the place to which it is to be changed, the board shall submit the same to the people of the county at the next general election. Notice of the submission of the question shall be included in the notice published once by the county auditor giving notice of the time and place of holding the general election. (SDCL 7-6-4)

In submitting the question of moving the location of a county seat, the majority of legal voters means a majority of the persons living in the county who are entitled to vote at an election. It is in the discretion of the county commissioners to determine how many legal voters there are in the county. An order granting the petition is in order at any time there is a sufficient number of petitioners at least thirty days prior to the October meeting in the year of the general election. (State v. Dean, 66 SD 282, 281 NW 822 (1938); AGR 1961-62, pp. 37-38)

3.026 Creation of Civil Townships

The 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 8-1-2) Whenever a majority of the legal voters of a civil township, formed as provided in § 8-1-2, shall petition the board of county commissioners for civil township organization, such board shall perfect the civil township organization thereof by appointing a board of supervisors for such township to act until its officers are duly elected and qualified as provided by this title. (SDCL 8-1-5) The board of county commissioners shall designate suitable places in each new civil township so formed for holding the first annual township meeting. Notice of the time and place of holding the annual township meeting shall be given by the township clerk of the township so divided as provided by law. (SDCL 8-1-12) Any civil township so formed by merger of townships or by separation from the original township shall be named in accordance with the expressed wish of a majority of the legal voters of the new township; but if they fail to designate a name, or the same cannot be properly given to such township, the board of county commissioners may designate a name. (SDCL 8-1-11)

Any contiguous territory that has at least five resident voters and includes a maximum of four congressional townships, together with any fractional townships that are contiguous with any of the congressional townships, may be organized as a civil township. (8-1-3) Moreover, to attach an unorganized township to an adjoining organized township, the electors must properly petition the county board for the combined civil township organization. (SDCL 8-1-3, 8-1-5; AGR 1959-60, pp. 126-127)

Any township or fraction of a township may be reorganized, divided, or merged with another township or fraction of a township, subject to approval by the voters in the affected civil townships and the affected portions of unorganized congressional townships as provided in §§ 8-1-7 to 8-1-10, inclusive, if: (1) The board of county commissioners proposes that the townships or fractions of townships be reorganized, divided, or merged; or (2)The affected township boards propose to the board of county commissioners that the townships or fractions of townships be reorganized, divided, or merged; or(3) A majority of the registered voters residing in the affected portions of the affected townships petition the board of county commissioners to propose that the townships or fractions of townships be reorganized, divided, or merged. (SDCL 8-1-8)

Whenever in any civil township, whether such civil township is or is not coextensive in area with a congressional township, containing an area platted, developed, and occupied as a village in which reside more than twenty-five percent of the legal voters of the civil township, in which village legal voters are no less than fifty in number, and which village has a population of not less than one hundred and has not been incorporated as a municipality, sixty percent of the legal voters residing in the portion of the civil township outside the area of the village shall petition the board of county commissioners, the existing or original civil township shall be divided and the area of the village and the area of the balance of the original civil township shall be set apart and each organized into a separate civil township. The said petition shall describe the original civil township, the area of the village and give the approximate number of legal voters therein, describe the area of the balance of the original civil township and give the approximate number of legal voters therein and state that it is the wish of the signers that the original civil township be divided and that the village area and the area outside the village be set apart and each organized as a separate civil township; said petition shall have endorsed thereon and attached thereto an affidavit of three or more of the signers that it is signed by sixty percent of the legal voters of the area outside the village area. (SDCL 8-1-20)

Upon filing such petition with the county auditor such board shall appoint a time and place for consideration of such petition, not less than twenty days thereafter, and shall cause notice thereof to be

sent by regular mail or delivered personally to the township clerk and to each member of the board of supervisors of the original civil township at least twenty days before the date set for hearing. (SDCL 8-1-21) At the time and place so appointed such board of county commissioners shall proceed to the consideration of such petition, and shall at the same time afford opportunity to any resident of the civil township to be affected thereby to be heard in opposition thereto, and if upon such hearing it shall appear to such board that such petition is signed by and is in accordance with the wishes of sixty percent of the legal voters of the portion of said civil township outside the area of the village, such board shall proceed at once to divide such original civil township into separate civil townships, determine and fix the boundaries of such civil townships resulting from such division. All proceedings thereupon shall be as provided in §§ 8-1-7 to 8-1-9, inclusive, for the division and reorganization of townships. (SDCL 8-1-22)

3.027 Provision for official Seal

The board of county commissioners shall procure and keep a seal with such emblems and devices as it may think proper, which shall be the seal of the county, and no other seal shall be used by the county auditor. (SDCL 7-18-2)

3.028 Regulation of Liquor Sales

Title 35 of the SDCL contains the regulations for alcoholic beverages, and is known and cited as the SD Liquor Control Law. Terms used in this title, unless the context otherwise plainly requires, shall mean:"Alcoholic beverage," any distilled spirits, wine and malt beverages as defined in this title. (SDCL 35-1-1)

No license for the on- or off-sale at retail of alcoholic beverages, as those terms are defined and classified under the provisions of this title, may be granted to an applicant for any such license, except after public hearing, upon notice, as provided for in §§ 35-2-4 and 35-2-5. (SDCL 35-2-3) The governing board of any incorporated municipality or the board of county commissioners of any county, before which applications for licenses referenced in § 35-2-3 are presented, shall fix the time and place for hearing upon all such applications that come before the board. The auditor or finance officer of the board shall publish notice once in the official newspapers of the municipality or county. The notice shall be headed "Notice of Hearing Upon Applications for Sale of Alcoholic Beverages," shall state the time and place when and where such applications will be considered by the board, and shall state that any person interested in the approval or rejection of any such application may appear and be heard. The notice shall be published at least one week before the hearing. At the time and place so fixed, the board shall consider each application and any objection to the application before making its final decision on the application. (SDCL 35-2-5) If any resident of an incorporated municipality files with the auditor or finance officer of the municipality, or if any resident of the county files with the county auditor of any county, a written request that the resident be notified of the time and place of hearing upon any specified application for a license for the on- or off-sale at retail of alcoholic beverages, the auditor or finance officer, as the case may be, shall give notice to the resident. The notice shall be by mail and shall be given a sufficient length of time before the hearing upon the application so as to allow the resident a reasonable opportunity to be present. (SDCL 35-2-4)

In the event of refusal by the governing board of the municipality or county to approve the application, such board shall endorse on the application the reasons therefore and return the application and fee to the applicant. No further application may be received from a person until after the expiration of one year from the date of a refused application. (SDCL 35-2-5.1) In the event of the approval of such application, the approval shall be endorsed thereon and also upon the present license

and the licensee shall thereupon be entitled to operate under the license for the succeeding licensing year. However, if any transfer of ownership or location occurs, or if the licensee shall have been convicted of any criminal offense during the past licensing year, the application together with the approval of the local governing body shall be forwarded to the secretary of revenue who shall have discretion to approve or disapprove the same. The license fee shall be deposited in the general fund of the first or second class municipality or county. (SDCL 35-2-5.2) No licensing authority may reissue any on-sale license issued pursuant to subdivision 35-4-2(4), (6), or (13) to the same licensee or the licensee's transferee if the license has not been actively used by the applicant during the two years preceding the date of the current application. For purposes of this section, the term, actively used, means that the licensed premise was open to the public during regular business hours for the sale and consumption of distilled spirits for at least sixty days during the two preceding years. However, the licensed premise is only required to be open five days per year if it is open to the public during a special event that has at least twenty-five thousand visitors. (SDCL 35-2-5.3)

Any application under this title for a manufacturer, distiller, wholesaler, solicitor, transporter, carrier, or dispenser license, and any application for a license to be issued to a county or municipality shall be initially submitted to the secretary who may approve or disapprove the application depending on whether the secretary deems the applicant a suitable person to hold the license and whether the secretary considers the proposed location suitable. (SDCL 35-2-1.1)

No off-sale licensee, licensed under subdivisions 35-4-2(3), (5), and (19), may sell, or allow to be sold, alcoholic beverages between the hours of twelve midnight and seven a.m. of the following day, or sell, or allow to be sold, distilled spirits or wine on Memorial Day or Christmas Day. In addition, no off-sale licensee may sell, or allow to be sold, alcoholic beverages on Sunday unless the municipality or the county by ordinance allows such sales on Sunday. (SDCL 35-4-81.1)

If any licensed dealer in alcoholic beverages or the dealer's agent or employee is convicted of:(1) A violation of any provision of this title, or any law or ordinance regulating the sale of alcoholic beverages; or(2)Any violation of law or ordinance in the operation of the licensed premises, the court or magistrate shall, within ten days after the conviction, mail a written notice of conviction to the auditor or finance officer of the municipality or the county auditor of the county having jurisdiction to approve alcoholic beverage licenses for the premises. A copy of the notice shall also be mailed to the Department of Revenue and Regulation. (SDCL 35-10-9)

Any alcoholic beverage license may be revoked by the secretary of revenue upon proof of violation of state law or rules and regulations adopted by the secretary of revenue, or violation of any ordinance or regulation of the county issuing license.

Upon service of notice of a decision or order for revocation of the license on the licensee, all of the licensee's rights under the license terminate ten days after the notice, except in the event of a stay on appeal. (SDCL 35-2-19) No licensee under this title, whose license is revoked, may be granted any license under this title for one year after the revocation. If any relative of any such former licensee, as relative is defined by § 35-2-6.5, or any of the former licensee's employees or former employees, applies for any such license before the one-year period has elapsed, the license may be granted only upon affirmative and satisfactory proof that the former licensee has no interest in the business. (SDCL 35-2-20) If in any proceeding under this chapter a violation is established, but the secretary is satisfied that the nature and the circumstances of the violation were such that a suspension of the license would be adequate, the secretary may, instead of revoking the license, suspend it for a period not exceeding sixty days. The suspension is effective twenty-four hours after service of notice of the suspension upon the licensee. During the period of the suspension, the licensee may not exercise any rights or privileges under the license. The secretary may, in lieu of suspending or revoking the license, accept a monetary offer in compromise in settlement of any proceeding under this chapter. The amount of the offer in compromise

may not exceed seventy-five thousand dollars. The secretary may also recover the actual costs of investigation and prosecution. (SDCL 35-2-21)

The governing board of the municipality or the board of county commissioners which approved the application for license under § 35-2-1.2 shall recommend to the secretary of revenue following a hearing that any license issued under this title be suspended or revoked for violation of any of the provisions of this chapter or for violations of any ordinance or regulation of the governing body issuing the license relevant to alcoholic beverage control which occurs on the premises of the licensee. Upon receipt of the recommendation the secretary shall proceed in accordance with the provisions of §§ 35-2-10 and 35-2-21. (SDCL 35-2-11.1)

Any action taken by the governing board of a municipality or board of county commissioners pursuant to § 35-2-11.1 shall be preceded by notification to the licensee, at the address given on the license, at least thirty days in advance of the date set for public hearing on the suspension action. Notice of public hearing shall be published in the official newspaper of the municipality or county at least one week prior to such hearing and in such form as deemed appropriate by the municipality or county governing body. (SDCL 35-2-11.2)

Any municipality or county may impose a fee on any person who is licensed pursuant to subdivision (4), (6), (11), (14) or (17) or SDCL 35-4-2 and who is issued a video lottery establishment license pursuant to SDCL 42-7A-41 an annual additional license fee for the privilege of locating video lottery machines on the licensed premises. The fee may not exceed fifty dollars for each video lottery machine. The fees imposed by this section are in addition to fees imposed under SDCL 35-4-2 and 42-7A-41 and shall be paid at the same time and in the same manner as the fees paid in SDCL 35-4-2. All fees received under the Act shall be deposited into the general fund of the municipality or county having jurisdiction over the licensee. However, the municipality or county may not impose this additional fee on more than one license per location.

3.029 Dance hall Regulation

Repealed information

3.030 Maintenance Costs of County Jail Inmates on Work Release

The board of county commissioners may require by resolution that a sum not to exceed the average daily prisoner cost may be charged to work release inmates of county jails as restitution to be applied toward prisoner maintenance cost, including but not limited to, room and board. In instances of undue hardship, the commissioners may reduce or waive the charges. (SDCL 24-11-32.1)

3.031 Providing Legal Counsel to Indigents

In any criminal investigation or in any criminal action or action for revocation of suspended sentence or probation in the circuit or magistrate court or in a final proceeding to revoke a parole, if it is satisfactorily shown that the defendant or detained person does not have sufficient money, credit, or property to employ counsel and pay for the necessary expenses of his representation, the judge of the circuit court or the magistrate shall, upon the request of the defendant, assign, at any time following arrest or commencement of detention without formal charges, counsel for his representation, who shall appear for and defend the accused upon the charge against him, or take other proper legal action to protect the rights of the person detained without formal charge. In each case, the indigent person, subject to the penalties for perjury, shall certify in writing or by other record such material factors relating to his ability to pay as the court prescribes. (SDCL 23A-40-6) At the time of arraignment for a violation of a Class 2 misdemeanor or a violation of an ordinance or at the time of the hearing for a petty

offense, the circuit court judge or magistrate may conclude and state on the record, in the defendant's presence, that the defendant will not be deprived of his liberty if he is convicted. The circuit court judge's or magistrate's statement that the defendant will not be deprived of his liberty if he is convicted shall be made before the defendant enters his plea. If the defendant is not in custody and if the court has concluded that he will not be deprived of his liberty if he is convicted, an indigent defendant charged with violating a Class 2 misdemeanor, an ordinance not having a penalty greater than a Class 2 misdemeanor or a petty offense, is not entitled to court assigned counsel. (SDCL 23A-40-6.1)

The board of county commissioners of each county and the governing body of any municipality shall provide for the representation of indigent persons described in § 23A-40-6. They shall provide this representation by any or all of the following: (1) Establishing and maintaining an office of a public defender;(2) Arranging with the courts in the county to appoint attorneys on an equitable basis through a systematic, coordinated plan; or (3) Contracting with any attorney licensed to practice law in this state. In those counties which have established an office of public defender, any proceedings after judgment may be assigned to the public defender. The provisions of § 5-18-2 do not apply to this section. (SDCL 23A-40-7)

Counsel assigned pursuant to § 23A-40-6 and subdivision 23A-40-7(2) shall, after the disposition of the cause, be paid by the county in which the action is brought, or, in case of a parole revocation, by the county from which the inmate was sentenced, a reasonable and just compensation for his services and for necessary expenses and costs incident to the proceedings in an amount to be fixed by a judge of the circuit court or a magistrate judge within guidelines established by the presiding judge of the circuit court. (SDCL 23A-40-8) If proceedings after judgment and conviction are taken, by motion in arrest of judgment, motion for a new trial or any presentence or post-sentence proceedings, or an appeal to the Supreme Court, an allowance for a sum as may be reasonable and just for the services rendered and for necessary expenses and cost incident to the proceedings shall be allowed to counsel assigned by the court pursuant to § 23A-40-6 and subdivision 23A-40-7(2), in an amount to be set by a judge of the circuit court or a magistrate judge within guidelines established by the presiding judge of the circuit court. (SDCL 23A-40-9)

The board of county commissioners of the county or the governing board of the municipality filing the lien may enforce, foreclose, satisfy, compromise, settle, subordinate, release, or otherwise dispose of the lien. (SDCL 23A-40-14) No lien provided for in this chapter shall be foreclosed upon the homestead, as defined by chapter 43-31, of the recipient or his family, nor upon any personal property which is exempt from process under chapter 43-45. (SDCL 23A-40-15) See chapters 43-31 and 43-45 for statutes dealing with homestead and personal property exemptions.

3.032 Establishment of Public Defenders

Each board of county commissioners may, by resolution, establish and maintain an office of public defender to fulfill the requirements of § 23A-40-7. (SDCL 7-16A-1)

If a board of county commissioners elects to establish an office of public defender it shall:(1) Prescribe the qualifications of the public defender, the term of office and the rate of annual compensation; and(2) Provide for the establishment, maintenance, and support of the office. (SDCL 7-16A-3)

A public defender advisory committee shall be established whenever an office of public defender is established. A committee shall consist of the following members:(1) One person not admitted to the practice of law, not an employee of the county, and not a law enforcement officer, who shall be appointed by the county commissioners of the originating county;(2) Two members of the board of county commissioners of the county, or if two or more counties are participating, one commissioner

from each county, who shall be appointed by the chairman of the board of county commissioners of each county;(3) Two attorneys practicing in the county or one attorney, if available, from each county, if two or more counties are participating in the plan, who shall be appointed by the presiding judge of the county's circuit court. The committee shall elect one of its members as chairman. (SDCL 7-16A-4)

The governing body of a municipality situated in a county in which an office of public defender has been established, may request the board of county commissioners of the county to extend the duties of the public defender to represent all indigent persons who are subject to proceedings for a violation of the ordinances of the municipality. On receipt of the request, the board of county commissioners shall adopt a resolution so extending the duties of the public defender. The contribution that the municipality shall make toward the expenses of the public defender whose duties include the municipality, shall be set and paid as provided by written contract of the board of county commissioners and the governing body of the municipality involved. (SDCL 7-16A-13) If a board of county commissioners elects to establish and maintain an office of public defender, it may join with the board of county commissioners of one or more other counties to jointly establish and maintain an office of public defender. In that case the participating counties shall be treated for the purpose of this chapter as if they were one county. (SDCL 7-16A-2)

If an office of public defender has been established, the board of county commissioners may employ, on recommendation by the public defender and in the manner and at the compensation prescribed by the advisory committee, such assistant public defenders, clerks, investigators, stenographers, and other persons as the advisory committee considers necessary for carrying out the public defender's duties. The employees shall serve at the pleasure of the public defender. Such employees and the public defender shall, for administrative purposes, be considered to be employees of the county which administers the public defender fund. (SDCL 7-16A-6) Any direct expense, including the cost of a transcript or substitute for a transcript, which is necessarily incurred in representing an indigent under this chapter shall be paid by the municipality or county on behalf of which the service is performed. (SDCL 7-16A-14) The board of county commissioners of each county participating in a public defender plan shall annually appropriate money from the general fund to administer the public defender. The funds appropriated by the participating counties shall be placed in a public defender fund which shall be administered by the county originating the public defender plan, unless otherwise agreed upon by the participating boards of county commissioners. Private contributions for the support of the office may be accepted and placed in the fund. The county administering the fund shall give an annual accounting to other participating counties. (SDCL 7-16A-16)

3.033 County Legal Expense Fund

There is established a county legal expense relief board to consist of five county commissioners from participating counties appointed by the executive board of the association of county commissioners established pursuant to § 7-7-28. Board members shall serve staggered terms of four years or until their term as county commissioner has expired. Per Diem costs for the board shall be established by the executive board of the association and shall be paid from funds collected by the association. (SDCL 7-16B-22)

If thirty-five or more counties elect to participate in the county legal expense relief fund prior to November 1, 1993, the board established in § 7-16B-22 shall establish administrative rules pursuant to chapter 1-26 regarding the procedure and requirements for allowing additional counties to participate in the fund, the procedure and requirements for allowing participating counties to withdraw from the fund and other policies to facilitate the administration, distributions, and assessments associated with the fund. (SDCL 7-16B-15)

Each participating county's share of the county legal expense relief fund shall be computed utilizing the following factors:(1) The percent of the total population of the participating counties in the state which reside in the county excluding individuals not subject to the jurisdiction of the unified judicial system; and (2) The percent of the true and full assessed value of the participating counties in the state associated with the county as determined by the Department of Revenue. Each participating county's share of the county legal expense relief assessment shall be calculated by multiplying the average of the two factors by the total assessment. (SDCL 7-16B-20)

3.034 Standards for Obscenity

Any county or municipality may provide, by ordinance, for a contemporary community standards test to regulate the sale, distribution, and use of obscene material and to regulate obscene live conduct in any commercial establishment or public place within its jurisdiction. (SDCL 22-24-25.1)

Chapter 4
County Officers and Employees

4.010 Officer Distinguished from Employees

It is important to distinguish between an officer of the county and a county employee, as the degree of direct supervision over the latter by the board of county commissioners is usually much greater than that exercised over county officers. The distinction is also necessary in the application of statutes on county affairs as the statutory provisions may refer to county officers, county employees or both. The question of whether a public position is a public office or mere employment is primarily of statutory powers and duties.

To determine whether a public position is an office, the nature of the services to be performed and the duties which are imposed should be investigated. As a general rule, a position is a public office when it is created by law with the incumbent assigned duties which involves some portion of the sovereign power and in the performance of which the public is concerned. There are other criteria, such as a fixed tenure of position, the taking of an oath of office, and the posting of an official bond that distinguish a public office from employment. These are not absolute criteria but should be considered with other elements. (Griggs v. Harding County, et al., 68n SD 429, 3 NW2d 485 (1942))

To illustrate the importance of the distinction, the attorney general has ruled that county commissioners, highway superintendents and other county officers are not "employees" with respect to the purchase of public liability insurance covering personnel operating county motor vehicles and highway machinery (AGR 1949-50, pp. 354-356). A county extension agent is not a county employee since the county does not exercise the power of selection, make payment of wages, exercise the power of dismissal or supervise his activities. (AGR 1957-58, pp. 149-150)

4.011 Officers to be Elected

All election laws of this state relating to nomination and election of candidates for office on political ballots shall apply to the nomination and election of a sheriff, county auditor, register of deeds, treasurer, state's attorney, and coroner. (SDCL 12-1-1.1)

4.012 Terms of Elected Officials

Unless otherwise provided by county charter, at primary and general elections there shall be nominated and elected in each organized county of this state county officers as follows:(1) In 1974 and each fourth year thereafter, a sheriff, county auditor, and register of deeds;(2) In 1976 and each fourth year thereafter, a treasurer, state's attorney, and coroner. The terms of all such officers shall be four years, or until their successors have been duly elected and qualified. Nevertheless, the term of any county office, combined with another pursuant to § 7-7- 1.2 or 7-7-1.3, shall expire on the first Monday of January following the ordinance authorizing the combination. (SDCL 7-7-1.1) Each organized county shall have a board of commissioners consisting of not less than three nor more than seven members, each of whom shall be elected at a general election only and whose term of office shall be four years commencing on the first Tuesday of January following election. Any commissioner who represents an even-numbered district shall run for election at the general election at which the President is elected;

any commissioner who represents an odd-numbered or unnumbered district shall run for election at the general election at which the Governor is elected. (SDCL 7-8-1)

Except as otherwise expressly provided, all state, district, and county officers shall qualify and enter upon the duties of their office on the first Monday of January succeeding their election or within twenty days thereafter. (SDCL 3-1-2) Except when otherwise expressly provided, the regular term of office for all county officers, when elected for a full term, shall commence on the first Monday in January next succeeding their election, except the office of county auditor, the term of which shall begin on the first Monday of March next succeeding his election. If the office to which any officer was elected be vacant at the time of his election, or becomes vacant after such election, even if he was not elected to fill a vacancy, he shall forthwith qualify and enter upon the duties of his office. (SDCL 7-7-1)

In the event that the county auditor is a successful candidate for some other office, he should resign and qualify for the office on the first Monday in January succeeding the election. (AGR 1943-44, p. 58)

4.013 Eligibility for County Office

Except when otherwise expressly provided all civil officers shall qualify substantially in the manner and form prescribed by this chapter and chapter 3-5. When the incumbent of an office is reelected he shall qualify as required in such chapters. (SDCL 3-1-1)

4.014 Official Oath and Bond

Every person elected or appointed to any civil office shall, before entering upon the duties thereof, qualify by taking an oath or affirmation to support the Constitution of the United States and of this state, and faithfully to discharge the duties of his office, naming it; and by giving a bond, when one is required, conditioned that he will faithfully and impartially discharge the duties of his office, naming it, and render a true account of all money, credits, accounts, and public personal property requiring inventory, as defined in rules issued by the commissioner of the bureau of administration, that shall come into his hands as such officer, and pay over and deliver the same according to law. (SDCL 3-1-5)

Persons conscientiously opposed to swearing may affirm, and shall be subject to the penalties of perjury as in case of swearing. (SDCL 18-3-5) An oath of office must be signed and filed when a person is re-elected or re-appointed to a public office (AGR 1959-60, pp. 200-201). Each deputy or assistant shall take and subscribe the same oath as his principal, naming his deputyship, which shall be endorsed upon and filed with his certificate of appointment. (SDCL 3-2-3)

When the incumbent of an office is reelected, his bond shall not be approved until he has produced and fully accounted for all public funds and property in his control under color of his office during the expiring term, to the person or authority to whom he should account, and the fact and date of such satisfactory exhibit shall be endorsed upon the new bond before its approval. (SDCL 3-5-7)

Every official bond shall be given with at least two sureties, and the bond of the state treasurer shall have at least four sureties, and that of the county treasurer at least three sureties. In lieu of a bond with personal sureties a bond executed by a surety company legally authorized to transact business in this state may be approved. (SDCL 3-5-4) Except when otherwise expressly provided each officer required to give bond may require a bond from his deputy or assistant in a penal sum not greater than half the penal sum of his own bond, and such bond may be retained by the officer for his own protection. (SDCL 3-2-4)

The bonds of all county officers shall be approved by the board of county commissioners, except bonds of the county commissioners, which shall be approved by the auditor, and shall, together with the oaths of office be filed in the office of the county auditor. (SDCL 3-5-2) The approval of official bonds

shall in all cases be endorsed upon the bond and signed by the officer approving, or by the chairman of the board of county commissioners. (SDCL 3-5-8)

In case the board of county commissioners should decide that a bond presented to it is insufficient, a reasonable time, not to exceed five days, shall be allowed the officer to supply a sufficient bond, and such board may take three days to consider the approval of any bond. If such board refuse or neglect to approve the bond of any county officer or township officer elect, he may present the same to the judge of the circuit court and serve notice of a time of hearing thereof upon the board. Upon due proof of such service being made to the judge at the time therein named, he shall, unless good cause for delay appear, proceed to hear and determine the sufficiency of the bond, and may approve the same, and such approval shall be in all respects valid. (SDCL 3-5-13)

The bond of the state auditor shall be in the penal sum of ten thousand dollars, of the state treasurer in the penal sum of five hundred thousand dollars, of the secretary of state in the penal sum of five thousand dollars, of the commissioner of school and public lands in the penal sum of twenty thousand dollars, of the attorney general in the penal sum of three thousand dollars, of county commissioners in the penal sum of one thousand dollars, of the state's attorney in the penal sum of one thousand dollars; the bonds of registers of deeds, county auditors, sheriffs, coroners, treasurers, and constables, whether of the county or any civil township therein, shall each be in the penal sum to be fixed by the board of county commissioners in each county; but that of the county auditor shall not be in a less penal sum than two thousand dollars, and that of the county treasurer shall not be in a less penal sum than four thousand dollars, except when the total amount of taxes to be by him collected in any year is less than two thousand dollars, and then in double the amount of taxes to be by him collected. In no case shall the bond of the county treasurer be less than the sum of one thousand dollars; and those of constables shall not be in a less penal sum than two hundred dollars each. (SDCL 3-5-3)

Whenever an officer, deputy, or employee of the State of South Dakota, or its subdivisions including counties, school districts, townships, municipal corporations, and all other governmental subdivisions and departments, in furnishing a bond required by law or rules or regulations of any board, or department, or governmental subdivision of this state, shall furnish a bond executed by a surety company legally authorized to transact business in this state, the state or any of its said departments or subdivisions is hereby authorized and required to pay the premium thereon out of its general funds, upon the lawful approval of said bond. (SDCL 3-5-5) The bonds of all county and precinct officers immediately after the approval of the same, shall be recorded at length in the office of the register of deeds of the county to which such bonds are given, in a book to be provided and kept for that purpose. When such bonds are so recorded they shall be forthwith filed respectively as provided in this chapter. (SDCL 3-5-9) The bonds and oaths of all civil officers shall be construed to cover duties required by law subsequent to giving them. No official bond shall be void for want of compliance with the statute, but it shall be valid in law for the matter contained therein. (SDCL 3-5-11) Wrongful acts of public officers are official acts for which sureties upon their official bonds are liable. (Burkland v. Bliss, 62 SD 91, 252 NW 25 (1933))

4.015 Administering of Oaths

The following officers may administer oaths:(1) Supreme Court justices, circuit judges, magistrates, notaries public, the clerk and deputy clerk of the Supreme Court, and clerks and deputy clerks of the circuit court, within the state, and federal judges, and federal magistrates;(2) Members of the Legislature, while acting as a member of any legislative committee, when examining persons before the legislative committee; (3) The county auditor, the county treasurer, the register of deeds, and the deputy of each, within their respective county;(4) Mayors, town board presidents, municipal finance

officers, deputy municipal finance officers, and township clerks, within their respective municipality or township;(5) Sheriffs and deputies if authorized by law to select commissioners or appraisers, or to impanel juries for the view or appraisement of property, or are directed as an official duty to have property appraised, or take the answer of garnishees;(6) Conservation officers for the purposes of taking a written statement pursuant to § 23A-2-1 for any offense of Title 41; and(7) Other officers in cases specifically provided by law. (SDCL 18-3-1) A deputy auditor, not a candidate, may act as a certifying officer for absentee voters. (AGR No. 72-19)

4.016 Creation of Vacancies in Offices

Every office shall become vacant on the happening of any one of the following events before the expiration of the term of such office: (1) The death of the incumbent;(2) His resignation;(3) His removal from office;4) His failure to qualify as provided by law;(5) His ceasing to be a resident of the state, district, county, township, or precinct in which the duties of his office are to be exercised or for which he may have been elected;(6) His conviction of any infamous crime or of any offense involving a violation of his official oath;(7) Whenever a judgment shall be obtained against him for a breach of his official bond. (SDCL 3-4-1)

4.017 Removal from Offices

The Governor shall have power, after notice and hearing, to remove from office any state's attorney, sheriff, or police officer, or any deputy or assistant state's attorney, or deputy sheriff who shall willfully fail, neglect, or refuse to perform any of the duties imposed upon him by, or to enforce any of the provisions of law relating to intoxicating liquors, or who shall willfully fail, neglect, or refuse to perform any duties imposed upon them by law, or who shall be guilty of intoxication or drunkenness, or who shall be guilty of the violation of any law, or who shall assist or connive in the violation of any law, or who shall be grossly incompetent to perform the duties of his office. (SDCL 3-17-3) Proceedings for the removal of any such officer may be commenced either by the Governor on his own motion, or on written complaint of any citizen of the state, filed with the Governor. Written notice of the time and place fixed for the hearing of such complaint, together with a copy thereof, shall be personally served upon such officer at least ten days before such hearing. (SDCL 3-17-4) Any person removed under the provisions of §§ 3-17-3 and 3-17-4 shall be ineligible to hold any public appointive or elective office or position of the state or any political subdivision thereof, during the unexpired part of the term of office to which such person was elected or appointed, and from which he has been removed. It is a Class 2 misdemeanor for any officer or board to allow or pay any person so removed, any salary for any public appointive or elective office or position during the period for which he shall be disqualified to hold such office or position, and any person or board who shall allow or pay any such salary contrary to the provisions of this section shall be liable to the state or political subdivision as the case may be, for the salary so paid or allowed. (SDCL 3-17-5)

Any officer of any local unit of government may be charged, tried, and removed from office for misconduct, malfeasance, nonfeasance, crimes in office, drunkenness, gross incompetency, corruption, theft, oppression, or gross partiality. (SDCL 3-17-6) The proceedings for removal shall be in the nature of a special proceeding, and shall be brought in the name of the state by the state's attorney of the county in which the officer charged resides, upon his own relation, or by the attorney general of the state upon his own relation, and must be so brought by either of such officers when so directed by the Governor. Such proceeding shall be commenced by the filing of a complaint in the office of the clerk of courts of the proper county, which complaint shall contain a brief and concise statement of the facts constituting the cause of action, without unnecessary repetition and the issuance of a summons in the form of a

relief summons in civil action, which summons shall require the defendant to answer the complaint within ten days after the date of service thereof, and shall be served by the sheriff or other officer authorized to serve process, by handing to and leaving with the defendant, personally, a copy of the summons, accompanied by a copy of the complaint, and such proceeding shall be brought on for hearing and determination upon a notice of not less than five days, served upon the opposite party or his attorney, except as hereinafter provided, whereupon it shall be the duty of the judge of the circuit court to at once appoint and hold a special term thereof, at which term the issues in such proceeding shall be heard and determined by the court. (SDCL 3-17-7) At any time after the commencement of the proceeding under § 3-17-7 the court shall, upon satisfactory showing, suspend the accused from the functions of his office until the final determination of the issues, and upon such suspension the judge shall immediately appoint some competent person to fill the office during such suspension. (SDCL 3-17-8) The judgment thereof, if against the defendant, shall be that of immediate ouster from his office, and declaring his office to be vacant. If the judgment in such proceeding be that of ouster, and the defendant fails or refuses to surrender his office, the circuit court shall issue all needful writs or process, directed to the proper officer, for the execution of such judgment. If the ultimate determination of the issues in the proceeding be in favor of the accused, such suspension shall not work a forfeiture of his salary during the period of such suspension. (SDCL 3-17-9) If the final determination of such proceeding be favorable to such accused officer, he shall be allowed the reasonable and necessary expenses he has incurred in his defense, including a reasonable attorney fee, to be fixed by the court or judge. Such expenses shall be paid by the county, if he be a county officer; by the township, if he be a township officer; and by the municipality if he be an officer of such municipality. (SDCL 3-17-10) In case of appeal to the Supreme Court, such appeal shall be advanced and take precedence over all causes upon the court calendar, and be assigned for hearing as soon after the record on appeal and briefs are filed as the business of the court will permit. The taking of an appeal by the defendant and the filing of a supersedeas bond shall not operate to stay the proceedings of the circuit court or judge, or restore the defendant to office pending such appeal. (SDCL 3-17-11)

4.018 Appointments to Fill Vacancies

All vacancies, except in the office of a member of the Legislature, representative in Congress, and United States Senator, shall be filled by appointment, as follows:(1) In state and district offices, and the Office of Supreme Court Justice and Circuit Judge, by the Governor;(2) In county and precinct offices, by the board of county commissioners, except vacancies on such board;(3) In civil township offices, by the board of supervisors or a majority of them, by warrant under their lands; and if a vacancy occurs from any cause in the foregoing board of appointment the remaining officers of such board shall fill any vacancy therein; and(4) In special purpose districts, unless otherwise provided, by the remaining board of trustees. (SDCL 3-4-3)When a vacancy occurs in the board of county commissioners, it shall be the duty of the remaining member or members of such board to appoint immediately some suitable person to fill such vacancy from the district where the vacancy occurs. If there be an even number of county commissioners remaining on the board of county commissioners, the county auditor shall be called in and shall act as a member of such board to fill such vacancy. (SDCL 3-4-4)

If a vacancy occurs within thirty days preceding an election day at which it may be filled, no appointment shall be made unless it be necessary to carry out such election and the canvass of the same according to law; in that case an appointment may be made at any time previous to such election to hold until after such election or until a successor is elected and qualified. (SDCL 3-4-5) In case the incumbent of an office is re-elected but a vacancy occurs between the general election and the date of the official term of office begins, the vacancy could be filled and a successor elected and qualified (State

ex rel. Hellier v. Vincent, 20 SD 90, 104 NW 914 (1905)). An independent candidate may be elected at the general election to fill a vacancy on the county board even through there was insufficient time to hold a primary election to fill a vacancy on the county board (AGR 1935-36, p. 400). Persons appointed to offices as herein provided shall qualify in the same manner as is required of those elected, the time of which shall be prescribed in their appointment. (SDCL 3-4-7)

Except when otherwise expressly provided, the regular term of office for all county officers, when elected for a full term, shall commence on the first Monday in January next succeeding their election, except the office of county auditor, the term of which shall begin on the first Monday of March next succeeding his election. If the office to which any officer was elected be vacant at the time of his election, or becomes vacant after such election, even if he was not elected to fill a vacancy, he shall forthwith qualify and enter upon the duties of his office. (SDCL 7-7-1; Noel v. Cunningham, 68 SD 606, 5 NW2d 402 (1942); AGR 1959-60, pp. 8-9)

If the offices are combined pursuant to § 7-7-1.2 and a vacancy occurs in one of the combined offices, the county commission shall appoint the remaining officer to hold the newly combined position until an officer can be nominated and elected. (SDCL 7-7-1.10)

Every office shall become vacant on the happening of any one of the following events before the expiration of the term of such office:(1) The death of the incumbent;(2) His resignation;(3) His removal from office;(4) His failure to qualify as provided by law;(5) His ceasing to be a resident of the state, district, county, township, or precinct in which the duties of his office are to be exercised or for which he may have been elected;(6) His conviction of any infamous crime or of any offense involving a violation of his official oath;(7) Whenever a judgment shall be obtained against him for a breach of his official bond. (SDCL 3-4-1) Except when otherwise expressly provided, every lawful incumbent of any public office, with a definite term, upon the expiration of such term shall continue to discharge its duties until his successor shall have been elected or appointed and has qualified, and shall be entitled to receive the prescribed compensation of such office during the time he shall so discharge its duties. (SDCL 3-14-1) (AGR 1953-54, p. 40)

Except when otherwise expressly provided, the regular term of office for all county officers, when elected for a full term, shall commence on the first Monday in January next succeeding their election, except the office of county auditor, the term of which shall begin on the first Monday of March next succeeding his election. If the office to which any officer was elected be vacant at the time of his election, or becomes vacant after such election, even if he was not elected to fill a vacancy, he shall forthwith qualify and enter upon the duties of his office.(SDCL 7-7-1, AGR 1955-56, p28).

Elected county officials who are elected for a different county office, for instance a county treasurer who is newly elected county auditor, should resign their former office and qualify for the new position if a vacancy exists. (Noel v. Cunningham, 68 SD 606, 5 NW2d 402 (1942))

All officers and employees of the State of South Dakota, or any political subdivision thereof, or any municipality organized and existing under the general laws of the State of South Dakota, or any person who is a duly qualified member of the "reserve component of the armed forces," who is a member of the ready reserve, who is a member of an organized unit, and who, in order to receive military training with the armed forces of the United States not to exceed fifteen days in any one calendar year, or who in order to perform active service in the South Dakota National Guard in the service of this or any other state pursuant to chapter 33-9 or chapter 33-15, leaves a position other than a temporary position in the employ of any employer, and who shall give evidence defining date of departure and to the extent reasonably possible date of return for purposes of military training or active service as provided above prior to the date of departure and who shall further give evidence of the satisfactory completion of such training or duty immediately thereafter, and who is still qualified to perform the duties of such position, shall be entitled to be restored to his previous or a similar position with the same status, pay, and

seniority, provided also that such seniority shall continue to accrue during such period of absence for military training or duty and such period of absence for military training or duty shall be construed as an absence with leave and within the discretion of the employer said leave may be with or without pay. (SDCL 3-6-22) Active military service as used in § 3-6-22 is hereby defined as any service ordered by the Governor of the State of South Dakota or the President of the United States. (SDCL 3-6-23) Such absence for military training shall not affect the employee's right to receive normal vacation, sick leave, bonus, advancement, and other advantages of his employment normally to be anticipated in his particular position. (SDCL 3-6-24) If any employer fails to comply with any of the provisions of §§ 3-6-22 to 3-6-24, inclusive, the employee may, at his election, bring an action at law for damages for such noncompliance, or apply to the circuit court for such equitable relief as may be just and proper under the circumstances. (3-6-25)

If a statute is not specific as to when an appointive position is to be filled and provides that when such an appointment is made the salary must be fixed by the county board, the board may fix the salary and date of employment to be effective at a future date. The salary must conform to the legal provisions effective at the date the person actually begins work under the agreement. (AGR 1961-62, p. 46)

4.019 De Facto Officer

The public acts of a de facto officer who has been holding a county office, although the incumbent is not legally qualified, have the same effect as the actions of a fully qualified county officer if the actions have been accepted in good faith and without protest. (AGR 1923-24, p. 96)

4.020 Record Inspection

Any county officer having in their possession public records, documents or other instruments belonging to the county must keep them available and open for inspection by any person, during the business hours of the office or place where they are kept. In some instances, records are specifically required to be kept secret by law. (SDCL listing of laws in pertinence)

1-27-1 Public records open to inspection and copying.
1-27-1.1 Public records defined.
1-27-1.2 Fees for specialized service.
1-27-1.3 Liberal construction of public access to public records law-Certain criminal investigation and contract negotiation records exempt.
1-27-1.4 Denial letters to be kept on file.
1-27-1.5 Certain records not open to inspection and copying.
1-27-1.6 Certain financial, commercial, and proprietary information exempt from disclosure.
1-27-1.7 Certain drafts, notes, and memoranda exempt from disclosure.
1-27-1.8 Certain records relevant to court actions exempt from disclosure.
1-27-1.9 Documents or communications used for decisional process arising from person's official duties not subject to compulsory disclosure.
1-27-1.10 Redaction of certain information.
1-27-1.11 Subscription or license holder list of Department of Game, Fish and Parks and certain insurance applicant and policyholder information available for fee--Resale or redistribution prohibited--Misdemeanor.
1-27-1.12 Chapter inapplicable to Unified Judicial System.
1-27-1.13 Certain records not available to inmates.
1-27-1.14 Redaction of records of office of register of deeds recorded prior to July 1, 2010.
1-27-1.15 Immunity for good faith denial or provision of record.

1-27-2 Repealed.

1-27-3 Records declared confidential or secret.

The governing body of each county, municipality, township, district, authority, or any public corporation or political entity, whether organized and existing under charter or under general law, shall promote and implement the principles of efficient records management for local records. The governing body may, as far as practical, follow the program established for the management of state records. The commissioner of administration may, upon the request of a governing body, provide advice and assistance in the establishment of a local records management program. (SDCL 1-27-18) The county may create a local government records destruction board to develop record management plans for the consideration of the state records destruction board. The local board shall consist of a county commissioner, the auditor, the treasurer, and the register of deeds. (SDCL 7-7-29) The State Record Destruction Board shall meet at least once each year and consider requests of all political subdivisions for the destruction of records and to authorize their destruction as in the case of state records. However, in the case of any records recommended to be destroyed, the board shall require a record to be kept of the disposition of the documents. (SDCL 1-27-19)

The State Record Destruction Board shall meet at least once each year and consider requests of all political subdivisions for the destruction of records and to authorize their destruction as in the case of state records. However, in the case of any records recommended to be destroyed, the board shall require a record to be kept of the disposition of the documents. (SDCL 1-27-19)

It shall be the duty of the board of county commissioners and the state's attorney in each county to examine the records of the several county officers, at the end of the officer's term of office, to see that they have been properly kept. Any failure must be remedied or it shall become the duty of the state's attorney to proceed against any such officer for neglect as provided in §§ 6-1-5 and 6-1- 6. (SDCL 6-1-7)

County officials may only destroy those records as expressly authorized by law. All papers and records must be kept as permanent and perpetual records of the county office where statutes expressly provide authority for the destruction of certain specific papers. (AGR 1959-60, pp. 319, 320)

4.021 Audit of Officer's Accounts

The auditor-general shall cause audits as follows:(1) Financial and compliance audits in accordance with generally accepted government auditing standards of each municipality and county in the state, shall be made at least once every two years;2) Municipalities with less than six hundred thousand dollars in annual revenue that are required to have an audit pursuant to federal regulations shall be audited in accordance with federal guidelines;(3) Municipalities with less than six hundred thousand dollars in annual revenue that are not required to have an audit pursuant to federal regulations may submit an annual report in lieu of a formal audit. Municipalities may subtract the annual revenue received from any municipal enterprise or utility system except utility systems defined in § 9-40-1 from total annual revenue, if the municipal enterprise or utility is audited separately. This report shall be submitted to the auditor-general on forms prescribed by the Department of Legislative Audit. The auditor-general may audit the books and records of any office or officer of any political subdivision if it is requested by the governing body or auditor-general finds that special reasons exist.(SDCL 4-11-4) Nothing contained in this chapter shall prevent a public corporation, as defined in § 5-18-1, from employing a private accountant to examine and audit the books and accounts thereof or of any of its officers whenever the governing body or authorized official thereof believes that the public interest requires it, provided such employment is first approved by the auditor-general within his guidelines; and, except as hereinafter provided, such private audit shall not be paid for before a copy thereof shall have been filed with and approved by the auditor-general. The entity receiving audit services may

approve progress payments proportionate to the audit work completed so long as ten percent of the amount billed is withheld pending approval by the auditor-general of the final report. The auditor-general may, in his discretion, accept such audit in lieu of an examination otherwise required to be made by him. (SDCL 4-11-7)

The auditor-general shall make detailed reports of the result of any audits or investigations made by the Department of Legislative Audit within sixty days after such audits or investigations have been completed. The auditor-general shall file reports of state agencies with the Governor and the respective state agency. The auditor-general shall file reports of political subdivisions with the respective governing board and finance director. (SDCL 4-11-9) Not less than ten days after the date of filing the reports on audit in any public office the auditor-general shall cause to be published for two issues in each of the official papers of any municipality, school district or county, the audit of which has been completed, a brief statement of the fact that he has made the audit and where the same may be found on file for public inspection and also a brief recital of the substantial items of error, irregularity, or loss which he has discovered but with sufficient detail so that the public may be informed of the important findings of the audit. Expense of such publication is to be paid at legal rate by the said municipality, school district, or county. (SDCL 4-11-12) For each audit made of any agency of state government, except those agencies or that portion of an agency that is financed with state general fund appropriations, the audited agency shall pay for audit services computed by dividing the estimated total expenses of the department of legislative audit relating to state government audits for the current fiscal year by the estimated number of audit hours to be spent performing state government audits during the same year and the result multiplied by the number of hours spent on the particular audit. For audits of state agencies if more than one fund is involved, the auditor-general shall determine the method of allocating audit costs. For each audit made of any county, municipality, school district, special district, or other local government agency, the audited agency shall pay for audit services computed by dividing the estimated total expenses of the Department of Legislative Audit relating to local government audits for the current fiscal year by the estimated number of audit and travel hours to be spent performing local government audits during the same year and the result multiplied by the number of hours spent on the particular audit. In all cases where the auditor-general, assistant, or employee is subpoenaed as a witness for a county or other public corporation in the prosecution of its officers reported on by the department, the county, or such other public corporation shall pay all witness fees and all expenses of serving subpoenas and attachment for witness and all expenses for procuring testimony, including the necessary expenses of such witness. All claims for services and expense of the auditor-general or assistants against such county or other public corporation shall be prepared in favor of the state treasurer in payment thereof at the first regular or special meeting of the governing board after the audit is completed. Upon the neglect or refusal of the governing board to issue a warrant in payment of the claim as herein provided, interest at the Category A rate of interest as established in § 54-3-16 shall be added for the time the same remains unpaid after the date of such meeting. (SDCL 4-11-18)
For each audit made of any county, the county shall pay the actual costs of the audit as stated in SDCL 4-11-18. To employ a private accountant to audit county records, the county board should adopt the necessary resolution specifying the firm or person to be employed and the compensation to be paid. The resolution should be presented to the department of legislative audit for approval (SDCL 4-11-7). Where the contract is one for the construction of a public improvement the advertisement must state where the plans and specifications may be examined. The plans and specifications for the construction of such public improvements shall be and remain on file in the office of the governing body at all times from the beginning of the publication of the advertisement for bids until the completion of the public improvement. The public corporation shall, upon request therefore, furnish at least one copy thereof, without charge, to each contractor resident in South Dakota who intends, in good faith, to bid upon such

public improvement, such copies shall be available at the date of the first publication of the advertisement for bids, and the public corporation may require the return thereof at the time of the opening of the bids. (SDCL 5-18-5)

The Department of Legislative Audit shall prepare and distribute an accounting manual for counties, municipalities, school districts, and their agencies and update such manual periodically. Each county, municipality, and school district shall purchase at least one copy of such manual at a price to be determined by the auditor general. (SDCL 4-11-6)

4.022 Required Reports of County officers

In any case where any county, municipality, civil township, or school district officer who is required by law to make an official report to any other county, municipality, civil township, or school corporation officer, board, tribunal, or state officer, and who shall willfully fail or neglect to make such report, or fail to perform such official duty, within the time required by law or at least five days thereafter or such longer time as may be specifically stated in such request, the proper official, department, board, or commission to whom such report was required to be made or who shall be authorized to request the same, shall be authorized to procure such required or requested information at the expense of the political subdivision required to furnish the same. (SDCL 6-1-5) The expense of procuring such required or requested information shall not exceed ten dollars per day and the necessary hotel and traveling expenses. The expenses incurred in procuring such information shall be paid to the state or political subdivision entitled to such report or information from whom such report or information is required at the first regular meeting of the governing body of such political subdivision. Such expense shall be paid from funds available for the payment of salaries or maintenance of the office of such delinquent officer. The officer of such political subdivision whose duty it is to furnish such report or information, and the sureties on his bond shall be liable for the costs and expenses incurred in obtaining such report or information to the political subdivision which has paid same and such subdivision may recover in a civil action against him and his sureties in any court having jurisdiction. (SDCL 6-1-6)

All public officers of the state, counties, townships, municipalities, and school districts who are required by law to publish legal notices of financial statements and who shall intentionally fail or refuse to make such publications, commits a petty offense and also shall be guilty of nonfeasance of office and subject to forfeiture of salary for the month in which such failure occurs, whichever penalty is greater. Such officers shall be subject to removal from office upon continuance of such neglect of duty. Suits to enjoin or recover payment of salary and for removal from office under this section shall be instituted in the proper circuit court by the state's attorney of the county in which the offending officer resides. (SDCL 4-10-11) Any defendant who fails to appear in court and who has not made adeposit, or stipulation and deposit, is guilty of a Class 2 misdemeanor. The court shall enter a default judgment against the defendant in the amount established by § 23-1A-22 and issue a summons or warrant for his arrest. (SDCL 23-1A-19) It shall be the duty of the county, municipality, civil township, or school district officer to provide, at the expense of the county, municipality, civil township, or school corporation, such blanks and records as are necessary for making the proper record and the transaction of any official business connected with his office. (SDCL 6-1-9)

Where any duty is or shall be enjoined by law upon any public officer, or upon any person holding any public trust or employment, every intentional omission to perform such duty, where no special provision shall have been made for the punishment of such delinquency, is a Class 2 misdemeanor. (SDCL 3-16-1)

4.023 Accounting off Public Property

It is hereby declared to be the policy of the Legislature to provide for the conservation of the land resources of the counties, for the establishment of sound administration and management of county-owned lands in order that these lands may be conserved and the maximum revenue obtained, for the protection of the tax base, and for the encouragement of stable operation of farms and ranches. (SDCL 7-31-1; AGR 1953-54, pp. 21-23)

County, township, or municipal officers or employees, having in their custody any public personal property, requiring inventory, as defined in rules issued by the commissioner of the Bureau of Administration shall annually on the thirty-first day of December, or within ten days thereafter, make in duplicate an inventory of all the public personal property. School employees designated by the school board shall make such inventory annually by June thirtieth and file it as provided in § 5-24-3. (SDCL 5-24-1)Officers and employees of each state institution and department are required to maintain an inventory of all public personal property in the manner prescribed by rule by the commissioner of the Bureau of Administration. (SDCL 5-24-1.1) The inventories required by §§ 5-24-1 and 5-24-1.1 shall show the actual cost for each item, or the estimated cost at the time of acquisition, if the actual cost cannot be ascertained. In the case of gifts, the estimated fair market value at the time of acquisition shall be used. The officer or employee shall retain one copy of the inventory in his office. The others shall be filed, as provided in §§ 5-24-1.1 and 5-24-3. (SDCL 5-24-2) All officers in state educational institutions shall file one copy of the annual inventory with the secretary of the Board of Regents, and one copy with the commissioner of the Bureau of Administration. All county officers and employees shall file one copy of the annual inventory with the county auditor. All municipal officers and employees shall file one copy of the annual inventory with the city auditor, finance officer, or town clerk of their respective municipalities. All township officers and employees shall file one copy of the annual inventory with the clerks of their respective townships. All school employees shall file one copy of the annual inventory with the business manager. (SDCL 5-24-3)

When any personal property is purchased by the state or any county, municipality, township, or school district, to be utilized in pursuance of the duties of the office for which supplied, a note shall at once be made of its purchase and receipt in the inventory report for that year. (SDCL 5-24-5) Whenever any article in the custody of any such officer or employee is lost or destroyed, he shall make a note of the same in the inventory for the current year, giving the date and circumstances of the loss. (SDCL 5-24-4) Every officer enumerated in § 5-24-1, shall turn over all the public personal property in his possession to his successor in office and shall take the receipt of his successor for all property requiring inventory, as defined in rules issued by the commissioner of the Bureau of Administration, and shall file such receipts in the offices where he is by this chapter required to file the inventory of the personal property in his possession. Every officer enumerated in § 5-24-1 shall, upon assuming office, give a receipt to his predecessor for all public personal property requiring inventory, as defined in rules issued by the commissioner of the Bureau of Administration, turned over to him. (SDCL 5-24-7) In the event a county officer disposes of any of the personal property without complying with the requirements of the law, they are, in addition to being guilty of a misdemeanor as stated in SDCL 5-24-8, liable for the value of the property, as shown by the last preceding inventory, to be recovered in a civil suit.

4.024 Salaries and Fees

No county or state officer for whose services a salary is provided by law shall receive any compensation for his services other than such salary. All fees received by him shall be paid into the county or state treasury, as the case may be, not later than the time set by § 7-9-17. This section shall not be so construed as to affect in any manner any officer who receives no salary other than the fees paid for his services. (SDCL 4-3-2) The state, subject to the approval of the Bureau of Finance and

Management, and Board of Regents, and, municipal corporations and other political subdivisions, subject to the approval of their governing boards, may authorize payroll deductions and withholding from wages of their officers and employees if authorized in writing or by means of electronic signature by the officer or employee. The Bureau of Finance and Management shall specify by rules, promulgated pursuant to chapter 1- 26, the types of voluntary payroll deductions approved for state employees and the procedures for obtaining and revoking approval and may adopt other reasonable rules necessary to implement this section. (SDCL 3-10-8)

Notwithstanding the provisions of §§ 7-18-3, 9- 18-1, and 13-8-35, the boards of county commissioners, the governing board of each municipal corporation, and school boards shall publish with the minutes of the first meeting following the beginning of the fiscal year, or within thirty days thereafter, or in the minutes of the first meeting following the completion of salary negotiations with employees for that fiscal year, or within thirty days thereafter, a complete list of all the salaries of all officers and employees and thereafter shall publish once any salary paid to any officer or employee who has been added or whose salary has been increased. The governing board shall publish, in their minutes, at least monthly, a total of payroll by department. (SDCL 6-1-10)

4.025 Salaries of Certain County Officials

The board of county commissioners shall establish, by resolution, the salary payable to the state's attorney. The salary payable may not be less than the following schedule as based upon the most recent decennial federal census of population for counties:

County Population	Salary Schedule
Below 5,000	$29,900
5,000 - 9,999	$32,600
10,000 - 20,000	$38,500
20,000 - 49,999	$41,300

In counties of over fifty thousand population where a full-time state's attorney is required or in counties where the commissioners designate the position full-time the sum of sixty-one thousand nine hundred dollars per year. In counties of less than fifty thousand population the commissioners may designate the position full-time. The decision by the commissioners shall be adopted prior to the first day of January in the year of the election and may not be amended for that term of office. However, if no state's attorney is elected to the office at any general election, the board of county commissioners may contract for such legal services and negotiate the compensation therefore on terms and conditions determined by the board of county commissioners. The board of county commissioners may not decrease the salary of the state's attorney during consecutive terms of office of the state's attorney. (SDCL 7-7-12)

4.026 Mileage Expense Payments

All county officials, except sheriffs, shall be paid for traveling expenses for each mile traveled in the discharge of their official duties not to exceed state mileage rate. (SDCL 7-7-24) The sheriff shall charge and remit the following:(1) For serving an order of arrest with commitment or bail bond and return, twenty-five dollars;(2) For serving summons, complaint, warrant of attachment, affidavit, notice and undertaking in claim and delivery, or injunction, order to show cause, citation, or other process, and return of the instrument, twenty-five dollars for all such process or instruments served at the same time

upon the same person regardless of the capacities in which such person is served. However, for all such process or instruments served upon another such person at approximately the same time at the same place, five dollars;(3) For serving subpoena for witness, each person, ten dollars; (4) For traveling expenses in a motor vehicle, a minimum mileage allowance of at least three cents over and above the rate set for state employees by the State Board of Finance but not more than six cents above the rate set for state employees by the State Board of Finance, as determined by the board of county commissioners, for each mile actually and necessarily traveled by motor vehicle. For traveling expenses in a private plane, a mileage allowance of ten cents above the rate set for state employees by the State Board of Finance for each mile actually and necessarily traveled by private plane. However, actual cost may be paid for travel by train, bus, plane, or other commercial vehicle;(5)For serving writ of execution and return of the instrument, whether satisfied or unsatisfied, thirty-five dollars;(6) For levying writ of possession, twenty-five dollars. However, if the sale of the property levied upon is not subsequently held, the actual costs or expenses associated with levying writ of possession shall be paid;(7) For advertisement of sale in newspaper, in addition to printing, twenty-five dollars;(8) For posting notices of sale of real property, twenty-five dollars, and mileage;(9) For executing writ or order of partition, twenty-five dollars;(10) For making deed for land sold on execution or order of sale, fifty dollars except no fee is charged when the deed only requires the sheriff's signature;(11) In addition to the applicable fees and expenses, a commission on all money received and disbursed by the sheriff on execution or order of sale, order of attachment, decree or on sale of real property or personal property, for each dollar not exceeding four hundred dollars, eleven cents; for each dollar above four hundred dollars, and not exceeding one thousand dollars, seven cents; for each dollar above one thousand dollars, and not exceeding fifteen thousand dollars, five cents; for each dollar above fifteen thousand dollars, and not exceeding twenty-five thousand dollars, three cents. However, in no case may the commission be less than twenty-five dollars. The commissions shall be included as a part of the cost of execution, order of sale, order of attachment, decree, or on sale of real or personal property, which shall be paid by the debtor out of the proceeds. However, in all cases of redemption prior to the sale, the sheriff is entitled to the commission as stated above, to be paid by the redemptioner as a cost of the redemption;(12) For cases in the circuit court, if persons, in whose favor an execution or order of sale is issued, bid in the property sold on execution or decree, the sheriff or officer making the sale shall receive the following compensation: If the amount for which the property is bid in is one thousand dollars or less, the sum of twenty dollars. If the amount for which the property is bid in is more than one thousand dollars, the sum of fifty dollars;(13) For making a sale of real property under a foreclosure of mortgage by advertisement, the same fees as for the sale of real property under a judgment of foreclosure and sale of real property; and(14) If personal property is taken by the sheriff on execution or warrant of attachment and applied in the satisfaction of the debt without sale, the same percentage on the appraised value of the property as in the case of a sale and all additional reasonable and necessary costs and expenses incurred in executing the duties of sheriff including expenses associated with the removal of property from the premises. No fee may be charged in any action under § 25-10-3, 25-10-6, 22-19A-8, or 22-19A-12. The fees established pursuant to this section shall be used for law enforcement purposes. (SDCL 7-12-18) The sheriff is hereby authorized and directed to remit to the county treasurer all fees collected for deposit in the county general fund. (SDCL 7-12-25)

For all necessary expenses incurred as a result of official travel outside the county, not specifically provided for in § 7-12-18, reimbursement shall be made by the board of county commissioners upon presentation of properly itemized vouchers. (7-12-21)

The state's attorney and his deputy and special agents are entitled to receive from the county their necessary traveling and hotel expenses, including necessary telephone and telegraph bills, while traveling for the purpose of making investigations and attending to the duties of their office either

within or without the state. The county treasurer shall pay the expenses upon the presentation of itemized vouchers approved by the state's attorney. When the state's attorney or his deputy or special agent uses his own automobile or conveyance, he is entitled to receive not more than the state rate for each mile necessarily traveled. (SDCL 7-16-16)

4.027 County Officer's Convention, Research, and the SD Association of County Commissioners

The boards of county commissioners may make payment to the South Dakota county commissioners' and officials' associations for the conduct of research on local government, the employment of research and other personnel, the publication of research studies, and the provision for office expenses. State supported educational institutions may be given financial assistance to conduct research as authorized by this section. (SDCL 7-7-27) The county commissioners and elected officials of any county may join with the commissioners and elected officials of other counties in formation of an association of county commissioners and elected officials of this state for the purpose of securing concerted action among the counties in behalf of such matters, measures and county affairs as the associations deem to be beneficial to and in the common interest of the counties. Such associations may hold meetings for the discussion and consideration of matters as affect the welfare of the counties. The board of county commissioners may annually appropriate funds for the payment of reasonable annual dues in any such association. (SDCL 7-7-28)

County commissioners, county highway superintendents, county auditors, county treasurers, registers 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 resolution of the board of county commissioners. (SDCL 7-7-25)

When the members of such commission shall act in drainage matters, the rate of compensation shall be set by the commission and the amount so received shall not be included in the compensation provided in § 7-7-5. (SDCL 7-7-6) Once the commissioners approve official travel pursuant to the first sentence of SDCL 7-7-26 the county is by statute obligated to pay the actual expenses incurred by county employees who travel reasonable on behalf of county business. (AGR No. 75-2)

Before any account, claim, or demand against any county for any obligation, property, or services for which such county is liable may be allowed, the person having such account, claim, or demand, either by himself or agent, shall:(1) Reduce the same to writing, and shall verify the same to the effect that such account is just and true, that the money therein charged was actually paid for the purposes therein stated; that the property therein charged for was actually delivered or used for the purposes therein stated, and was of the value therein charged; and that the services therein charged were actually rendered and of the value as charged, or in case such services were official, for which fees are prescribed by law, that the fees and amounts charged therefore are such as are allowed by law; and that no part of such account, claim, or demand has been paid; or (2) Present an invoice or verification which shall be attached to a county voucher, the latter being signed or verified by the county official who purchased the property or had the services rendered to the effect that such account is just and true; that the money therein charged was actually paid for the purposes therein stated; that the property therein charged for was actually delivered or used for the purposes therein stated, and was of the value therein charged; and that the services therein charged for were actually rendered and of the value as charged, or in case such services were official, for which fees are prescribed by law, that the fees and amounts charged therefore are such as are allowed by law; and that no part of such account, claim or demand has been paid. The provisions of this section do not apply to any claim or demand for the per

diem of jurors or witnesses fixed by law. (SDCL 7-22-1) The boards of county commissioners may make payment to the South Dakota county commissioners' and officials' associations for the conduct of research on local government, the employment of research and other personnel, the publication of research studies, and the provision for office expenses. State supported educational institutions may be given financial assistance to conduct research as authorized by this section. (SDCL 7-7-27)(AGR 1959-60, p.217)

4.028 Compatible and Incompatible (general)

Public offices which are compatible or incompatible with county offices include the following:
Compatible: Town marshal and sheriff or deputy sheriff (AGR 1953-54, p. 84); municipal mayor and states attorney (AGR 1907-08, p. 215) but the state's attorney may not be the attorney for a defendant in a criminal case for a crime committed within the city of which he/she is mayor (State ex rel.Jones v. Taylor, 46 SD 354, 193 NW 356 (1923)); assessor and register of deeds (AGR 1949-50, p. 56); states attorney and city attorney (AGR 1949-50, p. 331); register of deeds and mayor (AGR 1955-56, p. 217); township constable and county deputy sheriff (AGR 1955-56, pp. 211-212); a supervisor of assessors who is not a deputy county auditor or an employee of the auditor's office and delinquent tax collector (AGR 1955-56, p. 16); clerk of courts and county veterans service officer (AGR 1957-58, p. 75); clerk of courts and deputy director of assessments (AGR 1955-56, pp. 313-314).
Incompatible: Office of county commissioner and state legislator (AGR 1982-83); deputy sheriff (AGR 1930-32, p. 617); states attorney and deputy county treasurer (AGR 1953-54, p. 145); a deputy county auditor or other employee of the auditor's office who is also appointed the supervisor of assessors and delinquent tax collector, since the delinquent tax collector by statute is also a special deputy county treasurer (SDCL 10-22-34; AGR 1955-56, p. 16) deputy director of assessment and county commissioner (AGR 1955-56, pp. 304-305); office of county commissioner and civil defense director (AGR 1959-60, pp. 73-74); county auditor and city auditor (AGR 1959-60, pp. 84-85); county treasurer and municipal treasurer (AGR No. 72-18).

4.029 County Offices

In any county where there is no courthouse or jail erected by the county, or no lodging for prisoners provided under a joint agreement pursuant to § 24-11-4, or where those erected have not sufficient capacity, it shall be the duty of the board of county commissioners to provide for courtroom, jail, and offices for the following named officers: sheriff, treasurer, register of deeds, state's attorney, auditor, clerk of courts, and circuit court judge for the county, to be furnished by such county in a suitable building or buildings for the lowest rent to be obtained at the county seat, or to secure and occupy suitable rooms at a free rent within the limits of the county seat or any of the additions thereto until such county builds a courthouse. (SDCL 7-25-17)

The board of county commissioners in every county in this state may provide the circuit judge of the judicial circuit of which such county forms a part with suitable and sufficient courtroom facilities and equip the same to conduct the business of the court at a place other than the county seat of such county but within said county where such judge resides. (SDCL 16-6-7)

4.030 Acknowledgement of Instruments

The proof or acknowledgment of an instrument may be made at any place within this state before a justice or the clerk of the Supreme Court or a notary public. (SDCL 18-4-1) The proof or acknowledgment of an instrument may be made without the state, but within the United States, and within the jurisdiction of the officer, before either:(1) A justice, judge, or clerk of any court of record of the United

States;(2) A justice, judge, or clerk of any court of record of any state or territory;(3) A notary public;(4) Any officer of the state or territory where the acknowledgment is made, authorized by its laws to take such proof or acknowledgment; or(5) A commissioner appointed for the purpose by the Governor of this state.(SDCL 18-4-4) The deputies of the county officers have all the ministerial powers of the principal officers, which include the taking of acknowledgments. (AGR 1957-58. Pp. 185-186)

4.101 Hiring of Deputies and Employees

If in the judgment of the board of county commissioners it shall be deemed necessary for the prompt and accurate dispatch of business in the office of the county treasurer, county auditor, county coroner, or register of deeds that deputies or clerks be employed therein, it shall by resolution fix the number of deputies or clerks to be employed, the time of employment, and compensation which they shall receive. Such compensation shall be paid monthly by warrant on the general fund. (SDCL 7-7-20) The officer in whose office such deputies or clerks are employed shall have the sole power of appointing the same or removing them at pleasure, which appointment or removal shall be by a certificate in writing, and any deputy or clerk so appointed shall before entering upon the duties of his office, take and subscribe the oath or affirmation required by the Constitution, which oath or affirmation shall be endorsed on the certificate of appointment and filed as otherwise provided by law. The deputy or clerk shall furnish an official bond in such amount and with such surety or sureties as his principal may deem proper, which bond shall be attached to the certificate of appointment and oath of office. (SDCL 7-7-21) The county auditor may appoint his or her spouses to serve as deputy county auditor if the county does not have a law prohibiting it (AGR Opinion 83-12) Such deputies are authorized to sign all papers and do all other things which the officers themselves may do respectively, and the respective officers shall be responsible for the acts of their respective deputies. (SDCL 7-7-22)

The appointment of every deputy must be in writing and shall be revocable in writing at the pleasure of the principal, and all such appointments and revocations shall be filed as and where required for the bond and oath of the principal. (SDCL 3-2-1) It shall be the duty of the county officers whose offices are required by law to be kept at the county seat, to remove their respective offices, files, records, office fixtures, furniture, and all other property pertaining to their offices to the county seat designated by the voters within thirty days after such county seat shall have been designated by the voters under the provisions of this chapter. (SDCL 7-6-7) In any county where there is no courthouse or jail erected by the county, or no lodging for prisoners provided under a joint agreement pursuant to § 24-11-4, or where those erected have not sufficient capacity, it shall be the duty of the board of county commissioners to provide for courtroom, jail, and offices for the following named officers: sheriff, treasurer, register of deeds, state's attorney, auditor, clerk of courts, and circuit court judge for the county, to be furnished by such county in a suitable building or buildings for the lowest rent to be obtained at the county seat, or to secure and occupy suitable rooms at a free rent within the limits of the county seat or any of the additions thereto until such county builds a courthouse. (SDCL 7-25-17) No state, county, township, or precinct officer in this state shall keep his office, or keep any books, papers, records, or other property belonging thereto, at any place other than that prescribed by law. Any state, county, township, or precinct officer violating this section is guilty of a Class 2 misdemeanor. (SDCL 3-16-2) Such deputies have all of the ministerial powers of their principal officers, which include the taking of acknowledgements. Deputy register of deeds and deputy register of deeds and deputy county auditors, for example, may take acknowledgments on deeds and mortgages. (AGR 1957-58, pp. 185-186)

4.102 Deputy Sheriff

If in the judgment of the board of county commissioners, it shall be necessary for the prompt dispatch of business in the office of the sheriff that one or more deputies, jailers or clerks be appointed therein, the board shall by resolution fix the number of such deputies, jailers or clerks and the compensation which they shall receive. The salary of each clerk, jailer and deputy shall be paid out of the county general fund. (SDCL 7-12-9) A deputy sheriff may be paid a fixed salary plus the fees earned, since the term compensation is not limited to salary. (AGR 1959-60, p. 167)

The authority to hire and fire employees within the office of the sheriff resides in the board of county commissioners (AGR Opinion 87-17). The appointment of removal of each deputy, clerk, and jailer shall be made by the sheriff. Each appointment or removal shall be in writing, and filed with the county auditor. (SDCL 7-12-10) The sheriff is responsible for the acts of such employees in the performance of their duties (SDCL 7-12-11). When a deputy sheriff also performs the duties of a township constable, the township pays the fees according to the sheriff's scale and the county sheriff pays as deputy sheriff (AGR 1955-56, pp. 211,212). If a deputy sheriff is paid a fixed salary, the county board may authorize, by resolution, additional pay to deputies who must work overtime on days, such as election days, when the county auditor's office is required to remain open beyond the normal eight hour day. The method of computing this amount is left to eh discretion of the board. (AGR 78-24)

A county with a population of seventy-five thousand or more may adopt an ordinance establishing a civil service system for its county deputy sheriffs, and provide for the appointment of a civil service board, and prescribe its powers, duties, and compensation. The civil service system shall provide for the suspension or removal of any deputy sheriff for cause, subject to review and affirmance, reversal, or modification of such action by the civil service board. The deputy sheriff may request a hearing before the board at which he may be present in person or by counsel. The ordinance may be repealed or modified by a majority vote of the county commission. (SDCL 7-12-10.1)

4.103 Deputies and Assistants to State's Attorney

The state's attorney may appoint one deputy or limited deputy who shall be a duly licensed attorney and counselor at law having the qualifications required of state's attorneys, and if authorized by the board of county commissioners by resolution duly entered upon its minutes, the state's attorney may appoint one or more additional deputies or limited deputies, each of whom shall likewise be a duly licensed attorney and counselor at law having the qualifications required of state's attorneys. During such deputyship the person so appointed shall be vested with all the powers of the state's attorney, subject to the control of the state's attorney. A limited deputy shall be vested with only those powers specifically delegated by the state's attorney in writing at the time of his appointment, shall serve at the pleasure of the state's attorney and be under his supervision and control. (SDCL 7-16-3) The salaries of the deputy state's attorneys shall be paid in the same manner that the salary of the state's attorney is paid each month. No deputy state's attorney shall be entitled to receive any salary under the provisions of this section, unless the state's attorney shall, at the same time, attend to and perform the duties of his office as provided by law. The board of county commissioners may in its discretion allow such compensation for the deputies as it shall deem proper. (SDCL 7-16-5)

In all counties with a population of more than fifteen thousand as shown by the last federal census, the state's attorney shall appoint, and the board of county commissioners must allow a proper compensation as set by a judge of the circuit court for one deputy or limited deputy state's attorney who shall be responsible to assist in the enforcement of the desertion and public welfare laws of this state. (SDCL 7-16-4)

The board of county commissioners may by resolution recorded in their minutes, authorize the state's attorney to employ one or more special agents, either continuously or temporarily, to serve upon authorization of the attorney general or his designee, whose duty it shall be to assist the state's attorney in the investigation of crimes. The state's attorney shall inform the attorney general or his designee when special agents are employed or terminated. A special agent shall be a certified law enforcement officer and shall be under the control and direction of the state's attorney. The board of county commissioners, by resolution, shall set a per diem or hourly salary for special agents for actual time worked which shall be paid by the county upon presentation of itemized vouchers approved by the state's attorney. The state's attorney shall maintain offense, investigative and cancellation reports on matters in which he employs special agents in a form substantially similar to those forms used by the division of criminal investigation. (SDCL 7-16-7)

Besides the appointment of deputies, the state's attorney may also employ counsel to assist. In all criminal cases and civil cases in which the county is a party, where the defendant has employed two or more attorneys, the county board is authorized to employ counsel to assists the state's attorney in the trial of these cases. In civil cases or administrative proceeding outside the county, if the county of any county officers are named as parties, the board of county commissioners or county officers, if bringing suit in their official capacities or if sued in their individual or official capacities, may employ the county's state's attorney or deputy state's attorneys if affiliated, to prosecute or defend the actions, and compensation in addition to the state's attorney's salary may be paid for the legal services.

In counties where it shall be determined by the board of county commissioners of such county that the state's attorney of such county is unable to handle the work required in the prosecution of the action or actions as herein authorized by reason of the additional work imposed upon him by the adoption of this chapter, then and in such cases, the state's attorney is hereby authorized to contract with additional counsel to prosecute and bring such action or actions herein authorized, which additional counsel shall be by the state's attorney appointed as an assistant state's attorney, the contract with such additional counsel to be approved by the county commissioners, and his compensation paid out of the appropriate fund of said county. (SDCL 21-42-21) The board is not, however, limited by the statutes in appointing an assistant when unusual circumstances or prudence may require additional assistance. (Grant County v. Jones, 43 SD 6, 177 NW 121 (1920))

The state's attorney may have an associate in the prosecution of criminal cases, even though not appointed by the county commissioners, providing that there is no compensation to be paid by the county for such service. (AGR 1953-54, pp. 364-365)

The state's attorney and his deputy and special agents are entitled to receive from the county their necessary traveling and hotel expenses, including necessary telephone and telegraph bills, while traveling for the purpose of making investigations and attending to the duties of their office either within or without the state. The county treasurer shall pay the expenses upon the presentation of itemized vouchers approved by the state's attorney. When the state's attorney or his deputy or special agent uses his own automobile or conveyance, he is entitled to receive not more than the state rate for each mile necessarily traveled. (SDCL 7-16-16)

4.104 Welfare Workers

Whenever the board of county commissioners, in any county having within its borders a municipal corporation of the first class, deems it necessary and advisable for the best interests of the county, for the protection of health or the promotion of morals and order within the county, to employ one or more persons to act as welfare workers in the distribution of funds or supplies to needy poor within the

county, derived from any source, such board of county commissioners shall be empowered to employ such welfare workers. (SDCL 28-13-22)

4.105 Veterans' Service Officer

The board of county commissioners of each county in this state shall employ or join with another county or counties in employing a county veterans' service officer who, before such employment takes effect, is approved by the state director of veterans affairs. The county veteran's service officer's first appointment ends on the first Monday in January of the second year subsequent to the year of the appointment. The county veteran's service officer may be reappointed for terms of four years for each term. The appointment is subject to removal by the board or boards of county commissioners upon the recommendation of the state director of veterans affairs or for cause. (SDCL 33-16-24) Each county veterans' service officer shall provide, within the county or counties employing the officer, local contact between fieldmen of the State Division of Veterans Affairs and persons in the armed service or those discharged from such service, and the dependents of such persons. The county veteran's service officer shall aid or assist volunteer service officers in securing evidence and perfecting claims; advise those in the armed service and veterans or their dependents of benefits available to them; and aid them in completing required forms and complying with regulations. The county veteran's service officer works under the supervision and direction of the State Division of Veterans Affairs. (SDCL 33-16-26) The county veterans' service officer shall be a veteran who has served in the armed forces of the United States, as that term is defined by § 33- 17-1. However, any person who was qualified and held this position on July 1, 1989 may continue in such office. (SDCL 33-16-27)

A county veterans' service officer may be employed either part time or full time. The salary and necessary mileage and expense allowance of the officer shall be determined by the board or boards of county commissioners employing the officer. The officer shall be provided with office space, office fixtures, furnishings, and equipment, either in the courthouse or some other central and accessible place. (SDCL 33-16-28)

The Division of Veterans Affairs of the Department of Military and Veterans Affairs shall establish a training program for county veterans service officers. Every county veterans service officer employed under the provisions of this chapter shall annually complete the training program established by the division and successfully complete a test administered by the Division of Veterans Affairs. The director of the Division of Veterans Affairs shall certify training compliance to the board of county commissioners. The director shall recommend against reappointment of any county veterans service officer not in compliance with the provisions of this section. (SDCL 33-16-27.1)

The basic salary schedule for county veterans' service officers, which may be adopted by any board of county commissioners, is:(1) For counties with population of 50,000 and over, $18,750 per annum;(2) For counties with population of 20,000 to 50,000, $17,500 per annum;(3) For counties with population of 10,000 to 20,000, $15,000 per annum;(4) For counties with population of 5,000 to 10,000, $11,250 per annum;(5) For counties with population up to 5,000, $7,500 annually. (SDCL 33-16-28.4)

Upon notice to the county veterans' service officer or field officer of the Division of Veterans Affairs of the death within the county of a person entitled to burial benefits under this chapter, or at the officer's own initiative in a proper case, the veterans' service officer or field officer shall implement the provisions of this chapter in reference to the burial of the deceased. (SDCL 33-19-1)

The state shall pay for burial and funeral expenses, including cost of burial lot, a sum not exceeding one hundred dollars. No payment or reimbursement for burial and funeral expenses may be allowed unless a claim for the payment or reimbursement is filed or presented to the Division of Veterans Affairs within one year after the date of the burial. (SDCL 33-19-3)

4.106 Veteran's Preference in County Employment

In all public departments and subdivisions and upon all public works of this state and of the counties, municipalities thereof, honorably discharged soldiers, sailors, marines, and nurses of the Spanish-American War, Philippine Insurrection or China Relief Expedition, and veterans as that term is defined in § 33-17-1, who are citizens and residents of the state, shall be preferred for appointment, employment, and promotion; age, loss of limb, or other physical impairment which does not in fact incapacitate, shall not be deemed to disqualify them, provided they possess the qualifications and business capacity necessary to discharge the duties of the position involved. A veteran disabled due to a service connected cause shall be given a preference over a nondisabled veteran. (SDCL 3-3-1) Nevertheless, the county commissioners may give preference in exercising their discretionary power of appointment to a non-veteran whom they believe to be better qualified than any veteran applicant, provided the commissioners personally know the qualifications of each candidate and reach their decision in good faith. (State ex rel. Hall v. Bratsberg, 65 SD 84, 271 NW 218 (1937))

4.107 Hours of Labor

The board of county commissioners shall, by resolution, establish the hours of operation for each county government office, except for the offices of the sheriff and state's attorney. The county auditor's office shall remain open, if requested by the person in charge of a school or municipal election, until the closing of the polls and the tabulation of votes for that election. (SDCL 7-7-2)

The chairman of the board of county commissioners at his discretion may close the courthouse in case of emergency or severe weather and each such closing shall be for no more than one business day. The public shall be adequately notified. An emergency for the purpose of this section is an unforeseen occurrence or combination of circumstances which calls for immediate action or remedy. (SDCL 7-7-2.1)

4.108 Vacations Allowed Employees and Deputies

Deputy Officers and employees may be allowed vacation time with pay as part of their contract of employment made with the county board. In the absence of such a stipulation in the contract, vacations with pay are not to be allowed. (AGR 1949-50, p. 12)

The first day of every week, known as Sunday; the first day of January, commonly known as New Year's Day; the third Monday in January, commonly known as Martin Luther King, Jr. Day; the third Monday in February, the anniversary of the birthdays of Lincoln and Washington; the last Monday of May, commonly known as Memorial Day; the fourth day of July, commonly known as Independence Day; the first Monday in September, commonly known as Labor Day; the second Monday in October, commonly known as Native Americans' Day; the eleventh day of November, known as Veterans' Day; the fourth Thursday in November, commonly known as Thanksgiving Day; and the twenty-fifth day of December, commonly known as Christmas Day; and every day appointed by the President of the United States, or by the Governor of this state for a public fast, thanksgiving, or holiday shall be observed in this state as a legal holiday. If the fourth day of July, the first day of January, the eleventh day of November, or the twenty-fifth day of December falls upon a Sunday, the Monday following is a legal holiday and shall be so observed; and if any such day falls upon a Saturday, the preceding Friday is a legal holiday and shall be so observed. (SDCL 1-5-1) Any public or private business may be transacted or legal process or notices of any kind may be served or published on any of said days or next succeeding days designated herein as holidays, excepting Sundays, provided, that for good cause, a judge in whose court an action has been or is about to be brought, may endorse upon any process or notice permission to serve the same on Sunday, and if so endorsed, service thereof on Sunday shall be valid. (SDCL 1-5-2) Any

public or private business heretofore transacted or legal notice published upon any holiday except Sunday is hereby validated and declared to be of the same force and effect as if such business had been transacted or such publication made upon a business or secular day. (SDCL 1-5-3)

4.109 Liability for Acts of Employees

The South Dakota Supreme Court has followed the generally accepted legal principal that in the absence of specific statutory authorization, no action lies against a county to recover from the county for negligence of any of its officers, agents or employees (Arms v. Minnehaha County, 69 SD 164, 7NW2d (1943)). Furthermore, the attorney general has ruled that the county board does not have the authority to compensate a property owner who has been injured by negligence of a county employee, despite the fact that from moral considerations the board is disposed to render payment. (AGR 1945-46, p. 157)

4.110 Public Employees Union

Public employees shall have the right to form and join labor or employee organizations, and shall have the right not to form and join 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 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 by the governmental agency or its designated representatives and the employee organization or its designated representatives 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. (SDCL 3-18-2) Any officer receiving a salary from the state who shall keep or retain any money, emolument, fee, or perquisite, paid to or received by him for the performance of any duty or duties connected with his office, or in any manner paid to him as such officer or by reason of his holding such office is guilty of theft. It is the intent and meaning of this section that no officer receiving a salary from the state shall keep or retain any money, emolument, fee, or perquisite paid to him by reason of his holding such office, other than the annual salary payable to such officer as provided by the Constitution. (SDCL 3-8-3) No probate proceeding of any kind, nor the appointment of an administrator or agent shall be required and the presentation of a sworn statement by such spouse or circuit court judge shall be sufficient authority for the disbursing officer to pay or to cause to be paid such claims, and the payment of the same shall relieve and discharge the state, or any of its political subdivisions and all disbursing officers thereof, of any liability whatsoever in respect to such claim. (SDCL 3-8-10) Any employee of the State of South Dakota who, as a member of the South Dakota National Guard or any other reserve component of the armed forces of the United States, is ordered into Title 10 and Title 32 service, after January 1, 2002, other than for training purposes, shall receive the difference between the employee's state salary or wage rate at the time the employee was activated and the employee's military salary and allowances for the time the employee is engaged in such active federal service. The salary or wage difference shall be paid on at least a quarterly basis. (3-8-14)

Nothing contained in this chapter shall be construed to limit, impair, or affect the right of any public employee or his or her representative 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, so long as the same is not designed to and does not interfere with the full, faithful, and proper performance of the duties of employment; nor shall it be construed to require any public employee to perform labor or services against his will. (SDCL 3-18-15) The governing officer or board of each governmental agency shall enact, by agreement, ordinance, rule, or resolution, and make known to its employees a procedure which its employees may follow for prompt informal dispositions of their grievances. (3-8-15.1) If, after following the grievance procedure enacted by the governing body, the grievance remains unresolved, except in cases provided for in § 3-6A-38, it may be appealed to the Department of Labor, if notice of appeal is filed with the department within thirty days after the final decision by the governing body is mailed or delivered to the employee. The Department of Labor shall conduct an investigation and hearing and shall issue an order covering the points raised, which order is binding on the employees and the governmental agency. However, the department, upon the motion of any party, may dispose of any grievance, defense, or claim:(1) If the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and a party is entitled to a judgment as a matter of law; or(2) At the close of the evidence offered by the proponent of the grievance, defense, or claim if it determines that the evidence offered by the proponent of the grievance, defense, or claim is legally insufficient to sustain the grievance, defense, or claim. Nothing in this section may be interpreted as giving the department power to grant tenure or promotion to a faculty member employed by the Board of Regents. (SDCL 3-18-15.2) If no grievance procedure is enacted as provided in § 3-18-15.1, the Department of Labor shall promulgate rules pursuant to chapter 1-26 to adopt a standard grievance procedure to carry out the provisions of § 3- 18-15.1. (SDCL 3-18-15.3)

4.111 Liability Insurance and Workman's Compensation

A county may be held liable for the acts of its employees if liability is provided for be specific statute (Arms v. Minnehaha County, 69 SD 164, 7 NW2d 722 (1943)). The attorney general has ruled that the county commissioners may, at their discretion, purchase public liability insurance for certain employees in the county highway department to be paid from the county funds (AGR 1947-48, p. 246). 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. (SDCL 7-18-8)

As used in this title, the term, employee, means any person, including a minor, in the services of another under any contract of employment, express or implied, (and including as to a deceased employee, the employee's personal representative, dependents, and other persons to whom compensation may be payable), except:(1) Any person whose employment is not in the usual course of the trade, business, occupation, or profession of the employer;(2) Any official of the state or of any subdivision of government elected or appointed for a regular term of office or to complete the unexpired portion of any such term. However, the governing body of any subdivision may elect to treat officials of the subdivision as employees for the purposes of this section. Any employer performing labor incidental to the employer's occupation who has elected to proceed under the provisions of § 58-20-3

by purchasing workers' compensation insurance to cover himself or herself, may be deemed to be an employee under this section. However, nothing in this section may be construed as to affect that person's rights as an employer for purposes of §§ 62-3-1 and 62-3-2. (SDCL 62-1-3)

The county has the authority to insure itself for workmen's compensation benefits for poor relief workers even through workers were engaged in services to the county under expressed or implied contracts of hire. (SDCL 28-13-22, 28-13-20.2, 28-14-1, et seq., 62-1-3(2), 62-1-4, 62-1-5, 62-1-5.1, Scissions v. City of Rapid City, 251 NW 2d 681 (SD 1977))

4.112 Life and Health Insurance

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. (SDCL 7-8-26.1)

4.113 Unemployment Compensation

Refer to SDCL Title 61-1 to 61-7 for statutes concerning unemployment compensation.

4.114 Personal Interest of Public Officer

Every public officer, being authorized to sell or lease any property, or make any contract in his official capacity, who voluntarily becomes interested individually in such sale, lease, or contract, directly or indirectly, is guilty of a Class 2 misdemeanor (3-16-7). This statutory provision does not prohibit a county auditor from acting as an agent of a firm selling supplies to a county, if the auditor is not a member of the county purchasing committee (AGR 1947-48, p. 210). Moreover, county officers, including the county treasurer, may purchase tax sale certificates at the regular tax sale held annually in December when land is sold for delinquent taxes, and such officials may also purchase assignments of tax certificate of sale where the property has been bid in their county. These public officials exercise no discretion as to the purchase price, nor to whom such property should be sold. (AGR 1951-52, pp. 67, 286; 1951-52, p. 100; 1953-54, pp. 144-145)

It shall be unlawful for any officer of a county, municipality, township, or school district, who has been elected or appointed, to be interested, either by himself or agent, in any contract entered into by said county, municipality, township, or school district, either for labor or services to be rendered, or for the purchase of commodities, materials, supplies, or equipment of any kind, the expense, price, or consideration of which is paid from public funds or from any assessment levied by said county, municipality, township, or school district, or in the purchase of any real or personal property belonging to the county, municipality, township, or school district or which shall be sold for taxes or assessments or by virtue of legal process at the suit of such county, municipality, township, or school district. Such contract shall be null and void from the beginning. (6-1-1; AGR 1959-60, p. 213)

However, the above provisions are not applicable when the contract is made pursuant to one of the following subdivisions without fraud or deceit; but, such contract is voidable if the county was not satisfied fully or present at the time the contract is entered into:

1. Any contract involving one hundred dollars or less and the consideration is reasonable and just.
2. Any contract involving more than one hundred dollars or less than the amount for which competitive bidding is required, where no other source of supply or service is available within the county and the consideration is reasonable and just and that the accumulated total of the contract cannot exceed five thousand dollars in one year.

3. Any contract with any organization or group for which competitive bidding is not required and the consideration is reasonable and just, unless a majority of the governing body are members, or stockholders, or any one of them is an officer or manager of such organization or group, then the contract is null and void.
4. Any contract with any firm for which competitive bidding is required by law, and where more than one such competitive bid is submitted.
5. Any civil action to recover the amounts paid by a county, municipality, township or school district under any of the conditions of §§ 6-1-1 to 6-1-3, inclusive, must notwithstanding any other law or statute of limitation, be commenced within six months from the date of publication of the minutes recording the approval of the voucher in payment thereof or within six months from the filing of any audit report covering the expenditure therefore, whichever of the two events occurs the later; but, this limitation for commencement of civil action shall not apply where any fraud or deceit was used in securing or performing such contract. (6-1-4)

A county commissioner, for example, who becomes individually and voluntarily interested in a sale of property offered by the county at public auction, is committing an illegal act. Such commissioner is not entitled to recovery for improvements on such property since the original transaction is prohibited by statue. The restriction of public officials from being personally interested in the sale of public property is for protection of the public corporations and their taxpayers. (Bosworth v. Hagarity, 78 SD 157, 99 NW2d 334 (1959))

There is not legal restriction by virtue of the wife being a county officer (county treasurer) which would prevent the husband and wife is not sufficient in itself to indicate a disqualifying interest within the statue making it unlawful for an officer to be interest directly or indirectly in a public contract. (AGR 1955-56, p. 333; 1957-58, pp. 49-50)

4.115 Employment of Consultants

County commissioners are vested with wise discretion as to the contracts they may legally enter into for employment series. Specialists, for example, may be retained by the counties to assist them in their assessment program. (AGR 1959-60, pp. 69-72)

Per the SDCL 7-8-20; In addition to others specified by law, the board of county commissioners shall have power:

(1) To institute and prosecute civil actions in the name of the county, for and on behalf of the county;

(2) To make orders respecting the care and preservation of all property belonging to the county and to sell any real property of the county when authorized by law so to do;

(3) To levy a tax not exceeding the amount authorized by law, and to liquidate indebtedness;

(4) To audit the accounts of all officers having the care, management, collection or disbursement of any money belonging to the county or appropriated for its benefit;

(5) To construct and repair bridges; to open, lay out, vacate, and change highways; to purchase or acquire grounds for courthouse, jail, or other building sites, locate or relocate the courthouse on such sites; to establish election precincts in its county and appoint the judges of election; and, as a board of equalization, to equalize the assessment roll of its county in the manner provided by law;

(6) To furnish necessary blank books, blanks, and stationery for the county auditor, register of deeds, county treasurer, state's attorney, sheriff, and other elected or appointed county officers, to be paid out of the county treasury; also a fireproof safe or vaults, when in its judgment the same shall be advisable, in which to keep all the books, records, vouchers, and papers pertaining to the business of the board;

(7) To superintend the fiscal concerns of the county and secure their management in the best possible manner;

(8) To regulate the transaction of business in alcoholic beverages, the use and consumption thereof, to establish the number of on-sale licenses which may be issued, provide for reasonable classification of on-sale licenses and to fix the fees to be charged for the various classifications which shall be uniform within each class, all consistent with the provisions of Title 35. The secretary of revenue shall be promptly furnished certified copies of all ordinances and resolutions or amendments thereto adopted relating to the exercise of these powers;
(9) To make ordinances prohibiting the sale or exhibition of any obscene matter; however, no county resolution shall be effective in any incorporated area within said county;
(10) To do and perform such other duties and acts as it is or may hereafter be required to do and perform;
(11) To provide additional compensation to the county treasurer, county auditor, county register of deeds, state's attorney, and sheriff. This compensation shall be in addition to the salaries prescribed in §§ 7-7-9.1, 7-7-12, and 7-12-15;
(12) To provide office space, in addition to that provided in the county courthouse, for state's attorneys, appointed officials of the county and other employees;
(13) To receive and administer grants, loans and assistance and to enter into agreements for cooperative action, with or on behalf of any public agency or nonprofit organization, to establish, promote and support community development;
(14) To enact ordinances to regulate and prevent the placing of ashes, dirt, garbage or any offensive matter in any highway or public ground or in any body or stream of water within the county, but outside of an incorporated municipality or outside of the one mile limits of any incorporated municipality;
(15) To enact ordinances to regulate and compel the cleansing, abatement or removal of any sewer, cesspool or any unwholesome or nauseous thing or place;
(16) To license and regulate transient merchants, hawkers, solicitors, peddlers, itinerant vendors, and every person retailing tangible personal property or services, unless such business is carried on exclusively within the boundaries of a municipality or is carried on through home solicitation or from a fixed permanent location and place of business in this state where such goods and services are offered on a continuing basis;
(17) To enact by ordinance, for any portion of the county which is zoned, certain building codes pursuant to § 11-10-5.
(18) To prohibit or restrict open burning, after consultation with local fire officials and law enforcement officials, in order to protect the public health and safety.

4.116 Legal Holidays

The first day of every week, known as Sunday; the first day of January, commonly known as New Year's Day; the third Monday in January, commonly known as Martin Luther King, Jr. Day; the third Monday in February, the anniversary of the birthdays of Lincoln and Washington; the last Monday of May, commonly known as Memorial Day; the fourth day of July, commonly known as Independence Day; the first Monday in September, commonly known as Labor Day; the second Monday in October, commonly known as Native Americans' Day; the eleventh day of November, known as Veterans' Day; the fourth Thursday in November, commonly known as Thanksgiving Day; and the twenty-fifth day of December, commonly known as Christmas Day; and every day appointed by the President of the United States, or by the Governor of this state for a public fast, thanksgiving, or holiday shall be observed in this state as a legal holiday. If the fourth day of July, the first day of January, the eleventh day of November, or the twenty-fifth day of December falls upon a Sunday, the Monday following is a legal holiday and

shall be so observed; and if any such day falls upon a Saturday, the preceding Friday is a legal holiday and shall be so observed. (SDCL 1-5-1)

4.201 Register of Deeds

The register of deeds shall keep full and true records in proper books, of all deeds, mortgages, and other instruments authorized by law to be recorded in the register of deeds' office, and records of all chattel mortgages, bills of sale, conditional sale contracts, and other instruments authorized by law to be filed in the register of deeds' office, if the person offering any of such instruments pays the fee required by law for recording or filing the same. Any document presented for recording with the register of deeds shall contain a typed, stamped, or printed legend stating the words, prepared by, followed by the name, address, and telephone number of the preparer. The following documents are exempt from this requirement:

(1) Documents dated prior to July 1, 1994;

(2) Documents prepared by the United States of America, this state, or any instrumentality, agency, or political subdivision of either; and

(3) Court certified documents.

The register of deeds may destroy those records that the state records destruction board, pursuant to § 1-27-19, has declared to be of no further administrative, legal, fiscal, research, or historical value. (SDCL 7-9-1) The functions of the register of deeds, including but not limited to, the recording of instruments, liens, satisfactions, and releases and the filing of records, as well as the index to any such record, may be accomplished by means of microfilming or computerization, as provided in § 6-1-11. (SDCL 7-9-1.1)

Detailed forms are available from SDCL 7-9-8 through 7-9-13. The register of deeds shall keep a reception record and fee book to be provided by the county which shall be a part of the records of his office and in which shall be entered each item of fees charged or received by him for service rendered as such officer and which book shall also show the name and character of each instrument received for recording or filing, the date of the same, the names of the parties thereto, and the date, hour and minute when received for filing, and the filing number or book and page of record of such instrument. (SDCL 7-9-16) Within the time frame established by the county commission, the register of deeds shall deposit with the county treasurer the total amount of fees and other collections received. Unless otherwise required, all fees and other collections shall be placed to the credit of the general fund. At the discretion of the register of deeds, fees and other transactions may be charged on account but shall be collected by the end of the following month. The register of deeds shall maintain a detailed record of any accounts receivable. (SDCL 7-9-17)

No register of deeds may accept for record in the office of the register of deeds:

(1) Any deed, affidavit terminating joint tenancy or life estate interests, or oil, gas, or other mineral lease that does not include the names of the grantor and the grantee or the lesser and the lessee, the names of the joint tenant, the post office address of the grantee or lessee, and a legal description of the property conveyed or leased;

(2) Any mortgage that does not include the names of the mortgagor and the mortgagee, the post office address of the mortgagee, a legal description of the property, and the amount of the mortgage and when it is due;

(3) Any assignment of mortgage or oil, gas, or other mineral lease that does not include the names of the assignor and the assignee, the post office address of the assignee, and a legal description of the property; or

(4) Any deed or contract for deed dated after July 1, 1988, used in the purchase, exchange, transfer, or assignment of interest in real property that is not accompanied by a certificate of value containing the name and address of the buyer and seller, the legal description of the real property, the actual consideration exchanged for the real property, the relationship of the seller and buyer, if any, and the terms of payment if other than payment in full at the time of sale. (SDCL 7-9-7)

The register of deeds shall charge and receive the following fees:
(1) For recording deeds, mortgages, and all other instruments not specifically provided for in this section or this code, the sum of ten dollars for the first page and two dollars for each additional page or fraction thereof. Each rider or addendum shall be considered as an additional page. If a real estate document recorded with the register of deeds does not conform to § 43-28-23, the sum of ten dollars shall be charged in addition to the fees specified in this subdivision;
(2) For a certified copy of any instrument of record, including certificate and official seal, two dollars plus twenty cents for each page after five pages, and for an uncertified copy, one dollar, plus twenty cents for each page after five pages. The board of county commissioners by resolution shall establish the fees charged for duplicate microfilm. In addition to the fee for a certified copy of the record of any birth, there is an additional charge of two dollars for each copy requested, which shall be submitted on a monthly basis to the state treasurer to be deposited in the children's trust fund;
(3) For filing and indexing a bill of sale, seed grain lien, or thresher's lien, the sum of ten dollars. No fee may be charged for filing any satisfaction or termination of any instrument as prescribed in this subdivision;
(4) For recording oil, gas, and mineral leases, and other recorded documents relating to mineral or oil and gas lease exploration and development, six dollars per page; and
(5) Notwithstanding the provisions of subdivision (2) of this section, the board of county commissioners shall fix by resolution the fees to be paid by licensed abstracters of the county or by any person who has passed the written examination established by the Abstracters' Board of Examiners pursuant to § 36-13-11 for uncertified copies of recorded instruments, which fee may not exceed the actual cost to the county for providing such copies. (7-9-15)

The register of deeds may not charge a fee for discharging or canceling any personal property lien. The proof or acknowledgment of an instrument may be made anywhere in this state before a judge of the circuit court, a clerk of the circuit court, a magistrate of the circuit court, or a United States magistrate. Within a county or municipality for which the officer was elected or appointed, the proof or acknowledgment of an instrument may be made before a county auditor, a register of deeds, a mayor, or a municipal finance officer. (SDCL 18-4-2; AGR 1959-60, pp. 74-75)

In addition to all other instruments affecting the title to real property which are now eligible for record in the office of a register of deeds in this state, the following mentioned original instruments, together with copies of such other original instruments, records, proceedings, entries, orders, decrees, and appointments as are hereinafter mentioned, or portions thereof or excerpts there from, if such copies are duly certified to by the person or officer having the legal custody thereof as being true copies thereof, or of portions thereof or excerpts there from, are eligible for record in the office of the register of deeds of the county wherein the real property affected is situated, and shall be indexed against such property, and such record, or a copy thereof duly certified to by the register of deeds, or included as a part of a duly prepared and certified abstract of title to real property affected, shall be received and accepted as prima facie evidence of the facts or matters therein contained or set forth:
(1) Affidavits of publication of notices of sale, affidavits of sale, and every other instrument executed or used in connection with the making of a sale and conveyance of real property by any board,

department, officer, or officers of the State of South Dakota, or of any county, township, school district, or municipality of the State of South Dakota;

(2) Affidavits explaining the presence in the deed, mortgage, or other records of any county of any interloping deed, mortgage, or other instrument purporting to have been executed by a person or persons who are not shown of records as having owned any right or title to, interest or estate in or lien upon the real property described in such interloping instrument at the time the same purports to have been executed;

(3) Affidavits explanatory of recitals contained in deeds, mortgages, or other instruments to the effect that the real property described in such instruments is subject to certain mortgages or other liens, when such recitals leave in doubt the amount of the indebtedness or the extent to which the real property in question is affected thereby;

(4) Copies of orders and appointments made by any officer, department, or board of the State of South Dakota, pursuant to law, appointing any appointive officer, agent, or employee of the State of South Dakota, or of any department thereof, and defining the powers and authority of such officer, agent, or employee;

(5) Copies of the original minutes and records of meetings held and official action taken by any board of county commissioners, school board, board of education, township board, county weed and pest board, or governing body of any municipality, within the State of South Dakota, or by the members, officers, or directors of any federal bureau, board, department, or corporation created by, or by authority of, an act of Congress;

(6) Copies of orders and appointments made by any federal bureau, board, department, or officer, pursuant to law, appointing receivers for corporations which have been created or organized by, or by authority of, an act of Congress, and copies of any order or other instrument of record defining the powers and authority of any such receiver;

(7) Copies of letters testamentary, of administration, and of conservatorship, and of orders appointing receivers and trustees, issued by any court, foreign or domestic, when used to show the authority of a personal representative, conservator, receiver, or trustee to execute a satisfaction or assignment of, or to foreclose, a mortgage or other lien against real property; and the officer who certifies to any such copy as being a true copy of the original instrument on file and in his custody may include in his certificate a statement that the original instrument is, or at any given time was, in full force and effect and unrevoked, which statement shall be accepted as prima facie evidence of the facts so recited;

(8) Certified copies of any petition, order, notice, or other document on file in the office of the clerk of any bankruptcy court or any United States district court offered for record by any person.

The register of deeds of the county in which the corner is located shall charge a recording fee as set forth in subdivision 7-9-15(1) for the first page and two dollars for each additional page indexed. (SDCL 43-20-10)

Each register of deeds shall provide a suitable, well-bound book to be called the hospital lien docket in which, upon the filing of any lien claim under the provisions of this chapter, the register of deeds shall enter the name and address of the injured person, the name of the person, firm, or corporation alleged to be liable for the injury, the date of occurrence of the injury and the name and location of the hospital making the claim. The register of deeds shall make a proper index of the claim in the name of the injured person and shall charge a fee in accordance with subdivision 7-9-15(3). (SDCL 44-12-5)

An assignment of a mortgage on real property may be recorded in like manner as a mortgage when it is acknowledged or proved according to the statutes relating to proof of instruments for record and contains the name of the mortgagor, the mortgagee, the assignee and his post-office address, the date of the mortgage, the date, county, state, book, and page of record of the mortgage and full description

of the premises as described in the mortgage. This record serves as notice to all parties in interest or parties subsequently dealing with the property. If more than one assignment is listed on the instrument, the register of deeds is entitled to collect one dollar for each assignment listed after the first assignment. (SDCL 44-8-13)

In the event that microfilming is used by the register of deeds, all recorded instruments may be indexed by document number. (SDCL 7-9-8.1)

Previous to any marriage within this state, a license shall be obtained from the county register of deeds of any county, the fee for which is forty dollars. Ten dollars of the marriage license fee shall be retained by the county in which the fee is collected and placed in the county general fund. Thirty dollars of the marriage license fee shall be deposited in the county domestic abuse program fund. The license and record of marriage form shall be prescribed and furnished by the Department of Health. Certified copies of the marriage record shall be furnished by the county register of deeds for a fee established pursuant to § 34-25-52 and such fee shall be retained by the county in which the fee is collected and placed in the county general fund. (SDCL 25-1-10) The license and record of marriage form shall be prescribed and furnished by the department of health. Certifi4ed copies of the marriage record shall be furnished by the county register of deeds for a fee of five dollars.

4.202 Treasurer

The county treasurer is the collector of taxes. He shall keep his office at the county seat. It is his duty to receive all money belonging to the county from whatever source derived and other money which by law is directed to be paid to him. (SDCL 7-1-1) All money received by the county treasurer for the use of the county shall be disbursed by him only on the warrant of the county auditor drawn according to law, and all money shall be paid over by him at the time and in the manner provided by law. (SDCL 7-11-6) The county treasurer shall be the collector of all taxes extended upon the tax list of the county, and all delinquent taxes whether levied for state, county, township, municipality, school, or other purposes, anything in the charter of any municipality to the contrary notwithstanding, and he shall proceed to collect the same according to law, and to place the same when collected to the credit of the proper funds. (SDCL 10-21-1) The county treasurer shall pay over to the treasurer of any municipality, township, or school district, on the order of the county auditor, all money received by him arising from taxes levied and collected, belonging to such municipality, township, or school district, and shall require the treasurer to whom such payment is made to receipt upon the back of such order for the same, or the county treasurer may, on written order, duly signed and acknowledged by any municipality, township or school district treasurer, either transmit the money by mail or deposit the money to the credit of the local treasurer in the bank in which his account of tax money is kept. (SDCL 10-21-27)

Persons who are exempt from the requirements for obtaining the licenses specified by this chapter are still required to abide by the other conditions required by statute, the conditions of a license, as if they were licensed, and the rules of the Game, Fish and Parks Commission and are subject to the same criminal penalties for the violations thereof. (SDCL 41-6-1) Any agent, who has been appointed in the previous year to sell licenses and permits, is not required to furnish a bond or other security but shall pay the department an annual fee of twenty-five dollars. Any agent, who was not appointed in the previous year to sell the licenses and permits, shall be bonded or shall furnish security equal to the total value of the licenses issued to the agent at any one time. A certificate of deposit, money order, or other negotiable instrument issued by a bank, savings and loan association, or a credit union bearing the agent's social security number or employer identification number payable to the department is sufficient security. If an agent fails to timely pay the amount owed to the department, the department

may cash the certificate and satisfy the amount owed to the department and remit the balance to the agent. If the agent has paid all the fees owed and requests a return of the certificate of deposit, money order, or other negotiable instrument, the department shall endorse it payable to the agent and return it to the agent. No agent who defaults on payment of the amount owed to the department may be appointed an agent until the unpaid amount, plus interest at the Category B rate of interest as defined in § 54-3-16, is paid. (SDCL 41-6-59) (AGR 1959-60, pp. 141-142) Every owner, or with written authorization, any other person as defined by subdivision 2-14-2(18) on behalf of and as the agent for the owner, of a motor vehicle, motorcycle, truck tractor, road tractor, trailer or semitrailer, or recreational vehicle or trailer, which is operated or driven upon the public highways of this state, shall, except as otherwise expressly provided, present to the county treasurer of the owner's county, or, in case of a nonresident of this state, the treasurer of any county, application for the registration of that vehicle. The application form shall be furnished by the department and shall contain but not be limited to the following information:

(1) The number of cylinders or the bore and stroke of each cylinder;

(2) The manufacturer's weight;

(3) Whether the vehicle operates on diesel fuel, liquefied petroleum gas, gasoline, or any other special fuel;

4) The make, model, body, year, color, and vehicle identification number of the vehicle;

5) The odometer reading; and

(6) The purchase price and the name and address of the seller, buyer, and lien holder, if any.

Any person who fails to provide the above information to the county treasurer or the department is guilty of a Class 2 misdemeanor. The department or the county treasurer may not accept an incomplete application form or an application form which the department considers erroneous. (SDCL 32-5-2) The application required by § 32-5-2 shall also state the name of each owner along with the owner's South Dakota driver license number or social security number, or, if a business, the federal employer identification number, of the motor vehicle, the owner's residence post office address or the owner's business address, including county, and if in a first or second class municipality, the street number. (SDCL 32-5-3)(AGR 1961-62, p. 47)

A distress warrant may be issued to recover license plates or tags, issued pursuant to chapter 32-5 or 32-9, if the purchaser purchased the license plates or paid the excise tax pursuant to chapter 32-5B or paid fees pursuant to chapter 32-3 with an insufficient funds or no account check. If the check is not honored pursuant to § 57A-3-422 and is not made good within ten days, the county treasurer shall report the matter to the state's attorney for prosecution.(SDCL 10-56-24) Upon receipt of a distress warrant issued pursuant to § 10-56-24, the sheriff shall immediately seize the license plates or tags. (SDCL 20-56-25) Any license plates or tags recovered pursuant to § 10-56-25 shall be kept by the county treasurer and may not be reissued except to the original purchaser upon payment. (SDCL 10-56-26)

Accounts of all funds received and disbursed by the treasurer must be kept on forms which are approved by the auditor general. The auditor general prescribes the method of accounting to be used by the county treasurer (AGR No. 74-51) The treasurer of each organized county shall provide himself with and keep a warrant register which register shall show in a column arranged for that purpose the number, date, and amount of each warrant presented, the particular fund upon which the same is drawn, the date of presentation, the name and address of the person in whose name the same is registered, the date of payment when made, the amount of interest, and the total amount paid thereon, with the date when notice to the person in whose name such warrant is registered is mailed, as hereinafter provided. (SDCL 7-22-8) Whenever any warrant shall be presented to the treasurer for payment and there shall be no funds in the treasury appropriated for that purpose, the treasurer shall enter such warrant in his warrant register for payment in the order of presentation; and, upon such

warrant so registered, he shall endorse the registry number, date of registration, and the words "Not paid for want of funds," and sign such endorsement; provided however, that nothing in this chapter shall be construed to require the holder of any warrant to register the same. (SDCL 7-22-9) The county treasurer shall keep and maintain such accounting records as set forth in the accounting manual prepared by the auditor-general. However, the county treasurer may destroy any record which the records destruction board, acting pursuant to § 1-27-19, declares to have no further administrative, legal, fiscal, research, or historical value. (SDCL 7-11-12)

When the treasurer sends a check to a bank for deposit in the account of a political units share of the county general fund and the check is lost, the treasurer should stop payment of the check and issue a duplicate check. Although the statutes do not require a bond under such situation, the county board may require a bond. County officials should be satisfied from the affidavits that the check was lost before taking any affirmative action (AGR 1959-60, pp. 169-170)

A county treasurer may not be held personally liable for insufficient or no account checks issued to him for the licensure of snowmobiles, cars, trucks, trailers, motorcycles, and manufactured homes, if the county treasurer has exercised due diligence and has taken the following steps:

(1) Required positive identification of the individual presenting the check. Such identification shall include, but not be limited to, a valid driver's license;

(2) Within a thirty-day period of receiving notice that the check has been dishonored, instituted a collection process on the check. (SDCL 7-11-4.1)

If a county receives an insufficient fund or no account check, the county shall institute a collection procedure. If after one hundred eighty days the county has not received payment for the insufficient fund or no account check, the county treasurer may, with the majority approval of the board of county commissioners, remove the insufficient fund or no account check as an asset of the county. (SDCL 7-11-4.2)

Not later than the last day of January of each year, each agent shall return to the Department of Game, Fish and Parks all unused licenses, together with the stubs or duplicate copies of all licenses issued. Following the expiration date of hunting, fishing, and trapping licenses, stamps, and permits issued by the department, the department may destroy the licenses, stamps, and permits together with the stubs or duplicate copies upon completion of an audit thereof by the Department of Legislative Audit and filing of a satisfactory report. (SDCL 41-6-69) It is a Class 2 misdemeanor for any person to enter upon or into any boundary river, stream, or lake from the South Dakota side of such waters for the purpose of hunting, fishing, or taking of any protected game, fish, or wild fowl there from without having first lawfully obtained South Dakota hunting or fishing license. (SDCL 41-6-7)

The provisions of chapter 34-18 notwithstanding, a county may require that the owners or operators of temporary campgrounds secure a permit from the county before operating as a temporary campground within the county. For the purposes of this section, a temporary campground is any campground which operates at a fixed location for a temporary period of time in connection with a fair, carnival, public exhibition, or similar gathering. The owner or operator of a temporary campground shall apply to the county treasurer upon forms provided by the county treasurer for a permit required by this section. The board of county commissioners may by resolution establish fees for a temporary campground permit. (SDCL 7-18-21) Counties may regulate door-to-door sales, peddlers and solicitors. Counties are also authorized to issue permits for temporary campgrounds and special events. Section 7-18 and SDCL 34-18 states a county may require that the owners or operators of temporary campgrounds secure a permit from the county before operating as a temporary campground within the county. A temporary campground is defined as any campground which operates at a fixed location for a temporary period of time in connection with a fair, carnival, public exhibition or similar gathering. The owner or operator of a temporary campground shall apply to the county treasurer upon forms provided

by the county treasurer for a permit required by SDCL 34-18. The board of county commissioners may by resolution establish fees for a temporary campground permit.

A county may require that the promoters of a special event secure a permit from the county before a special event may be conducted within the county unless the special event is carried on exclusively within the boundaries of a municipality. A special event is defined as a fair, carnival, concert, public exhibition or similar gathering except for special events sponsored, in whole or in part, by an accredited South Dakota educational institution. The promoter of a special event shall apply to the county treasurer upon forms provided by the county treasurer for a permit required by SDCL 34-18. The board of county commissioners may be resolution establish fees for a special event permit.

4.203 Deposit and Care of County Funds

The county treasurer shall deposit and at all times keep on deposit the money in his possession as county treasurer in state or national banks within the county. In the event that such deposits exceed the limit prescribed in § 7- 20-10 or if there is but one bank located within the county then such deposits may be made in other banks or branch banks within an adjacent county of this state having an approved and responsible financial standing. Any such bank may apply for the privilege of keeping such funds upon the conditions herein prescribed and shall state in the application the amount of money desired. If bond or securities are segregated as provided in § 4-6A-3, it shall be the duty of the board of county commissioners to approve such application. (SDCL 7-20-1) School districts, counties and municipalities cannot designate a federal credit union as an official depository for their funds. (AGR 86-41)

Domestic savings and loan associations whether chartered by this state or by the United States are official depositories for county funds; provided such funds are invested only in the accounts of such associations which are insured by the Federal Savings and Loan Insurance Corporation. The amount so invested in any one association may not exceed the amount which is covered by such insurance unless such association qualifies as a savings and loan depository as provided by chapter 4-6A. Such funds shall only be deposited with savings and loan associations located within the county where the funds originate. If there is but one such association located within the county, then such deposit may be made in other savings and loan depositories within an adjacent county. (SDCL 7-20-1.1) No bank at any time shall have on deposit county funds of any one county in excess of one hundred percent of the capital and surplus of such bank. (SDCL 7-20-10)

No bank may give preference to any depositor or creditor by pledging the assets of the bank as collateral security except as provided in §§ 51A-4-13 and 51A- 5-18 and as follows:

(1) The bank may deposit with the treasurer of the United States so much of its assets as may be necessary to qualify as a depository for federal funds and bankruptcy court funds;

(2) A bank, in order to qualify as a depository of funds deposited by the state, any political subdivision thereof, including counties, municipalities, townships, and school districts, or by any officer, commission, board, bureau, or agency of the state or political subdivision or any tribal government, shall segregate as security, investment securities as provided in §§ 51A-4-25 and 51A-4-26, or irrevocable standby letters of credit, or a surety bond, in accordance with § 4-6A-3, a sum equal to one hundred percent of the amount deposited in excess of the amount insured by the Federal Deposit Insurance Corporation;

(3) A bank may pledge securities to guarantee deposit of out-of-state municipal, school district, county, or state funds in excess of the amount insured by the federal deposit insurance corporation;

(4) The public deposits preferred by this section are hereby granted a paramount, preferred, and perfected first lien on the bank assets so deposited or segregated or pledged. (51A-10-9)

Any county officer neglecting or refusing to comply with the provisions of §§ 7-20-1 to 7-20-11, inclusive, shall be subject to removal from office. The county treasurer shall not be liable on his official bond for any loss of money deposited in compliance with the provisions of said sections. (SDCL 7-20-12)

In selecting depositories for the deposit of county funds, the board of county commissioners may designate one or more banks within the county as active depositories for the deposit and withdrawal, by the county treasurer, of daily receipts of cash, checks, drafts, and other cash items. (SDCL 7-20-13)

The county treasurer shall deposit and at all times keep on deposit the money in his possession as county treasurer in state or national banks within the county. In the event that such deposits exceed the limit prescribed in § 7- 20-10 or if there is but one bank located within the county then such deposits may be made in other banks or branch banks within an adjacent county of this state having an approved and responsible financial standing. Any such bank may apply for the privilege of keeping such funds upon the conditions herein prescribed and shall state in the application the amount of money desired. If bond or securities are segregated as provided in § 4-6A-3, it shall be the duty of the board of county commissioners to approve such application. (SDCL 7-20-1) (AGR 1955-56, pp. 77-78)

The governing bodies of a political subdivision of this state may, by resolution, create an endowment fund. Notwithstanding any other law to the contrary, the governing body may transfer any gift or donation to the endowment fund. No limit on the amount of unobligated cash balance may apply to the revenue in the fund created. The interest earned from the revenue in an endowment fund created may be spent by the governing body of a political subdivision for any legal purpose. The principle in an endowment fund may be expended by the governing body by resolution after a public hearing called for that purpose.

4.204 Duty of Treasurer to Insure County Property

The board of county commissioners may insure any or all of the public buildings and property belonging to the county. In case of the destruction or damage of the buildings or property so insured, such board shall demand and receive any money due on account of such insurance and cause same to be paid into the county treasury. All money received may be applied to the fund for rebuilding or restoring such buildings or property. Such insurance policies shall be filed in the office of the county auditor. (SDCL 7-25-16)

4.205 Bond of Treasurer

Whenever the county treasurer in furnishing the bond required of him by law shall furnish a bond executed by a surety company legally authorized to transact business in this state, upon the approval of such bond by the county commissioners, the county shall pay the premium for such bond. (SDCL 7-11-2) The board of county commissioners may require the county treasurer to give additional sureties whenever in its opinion the existing security shall have become insufficient; and such board is authorized to demand and receive from the county treasurer an additional bond as required by law, with good and sufficient security, in such sum as such board may direct whenever in its opinion more money shall have passed or is about to pass into the hands of such treasurer than could be recovered under the penalty in the previous bond. If any county treasurer shall fail or refuse to give such additional security or bond within ten days after having been required so to do, his office shall be considered vacant and another treasurer shall be appointed. (SDCL 7-11-3) If any county treasurer shall fail to make return or settlement or to pay over all money with which he may stand charged at the time and in the manner prescribed by law, it shall be the duty of the county auditor, on receiving instructions from the state auditor or from the county commissioners, to cause suit to be instituted against such treasurer and his sureties or any of them in the circuit court of his county. (SDCL 7-11-18)

A county treasurer who certifies that taxes were paid, but actually the taxes were uncollected, should be held liable for the amount of such taxes thereby lost and recovery should be attempted from the bond of the treasurer. (AGR No. 71-8)

4.206 Auditor

The county auditor is the clerk of the board of county commissioners and shall keep an accurate record of its official proceedings and carefully preserve all of the documents, books, records, maps, and other papers required to be deposited or kept in his office and carefully perform such other acts and duties as are required by law. However, the county auditor may destroy any record which the records destruction board, acting pursuant to § 1-27-19, declares to have no further administrative, legal, fiscal, research, or historical value. (SDCL 7-10-1) The county auditor is required to keep and maintain such accounting records as set forth in the accounting manual prescribed by the auditor-general. However, the county auditor may destroy any record which the records destruction board, acting pursuant to § 1-27-19, declares to have no further administrative, legal, fiscal, research, or historical value. (SDCL 7-10-2)

The method of accounting used by county auditors is prescribed by the auditor general (AGR 74-51). The county auditor shall also at the close of each calendar month list all cash and cash items in the hands of the county treasurer and at the same time verify the balances in the several bank depositories. He shall make a report of the same to the board of county commissioners at each regular meeting, showing bank balances, the total amount of actual cash, the total amount of checks and drafts which have been in the treasurer's possession not exceeding three days, and he shall make in detail an itemized report of all cash items, checks, and drafts which have been in the treasurer's possession over three days, which report shall be made a part of the county commissioners' proceedings. (SDCL 7-10-3)

No claim against the county shall be paid otherwise than upon the allowance of the county commissioners upon the warrant of the county auditor, except one authorized to be allowed by some other person or tribunal, in which case the claim shall be paid upon the warrant of the county auditor upon the proper certificate of the person or tribunal allowing the same. (SDCL 7-22-2)

The county auditor shall prepare by the first day of March of each year a report of the revenues and expenditures of the previous year and the assets, liabilities, and equity of the county as of December thirty-first of the previous year. The report shall be made in the form prescribed by the auditor-general and shall be published within thirty days in the official newspapers of the county. A copy of the publication shall be filed with the auditor-general. (SDCL 7-10-4)

Such lands shall be sold at public auction to the highest bidder, at the courthouse of the county in which the lands are situated; or, if there be no courthouse, at the building in which the office of the county auditor is located, and between the hours of ten a.m. and five p.m. only. No bid shall be received and no land shall be sold for less than the appraised value and in no case for less than ten dollars an acre. The commissioner of school and public lands or his agent may adjourn the sale from day to day, and for good cause may adjourn it for a period of not more than three days. The county auditor shall act as clerk at all sales of school lands and shall keep a complete record of such sales and forward a certified copy of the same to the commissioner. (SDCL 5-9-9) Whenever the county auditor shall deliver to the commissioner of school and public lands the certified copy of the record of any land sales as provided in § 5-9-9, the county auditor shall take notice of the same and such land shall thereupon become subject to taxation the same as other lands; and taxes shall be assessed thereon, collected and enforced, in like manner as taxes on other lands, unless the commissioner of school and public lands shall notify the county auditor prior to the next ensuing assessment date that the sale of such lands or any description thereof has been disapproved. (SDCL 5-9-28)

4.207 Election duties of the Auditor

The county auditor shall perform all the duties required of him by law relative to making out and delivering notices of special and general elections, to making abstracts of and canvassing the votes cast at any special or general election, to issuing certificates of election to members of the Legislature, county, and precinct officers, and to forwarding the abstracts of votes cast at general or special elections to the secretary of state. (SDCL 7-10-5) If the board of county commissioners for any cause fails or refuses to call special elections, the county auditor may provide for and call any special election under any of the statutes of the state in force within such county, upon the petition of a majority of all the registered voters of the county, based upon the total number of registered voters at the last preceding general election preceding such call. (SDCL 7-10-6)

The county auditor has complete charge of maintaining and safeguarding the voter registration records in the county. The county auditor shall retain all voter registration records in the auditor's office. All such records shall be open to public inspection at all times during office hours, except that public access to social security numbers and driver license numbers is restricted. Voter registration shall be conducted by each county auditor and municipal finance officer. Voter registration shall be available at the secretary of state's office and at those locations which provide driver licenses; food stamps; temporary assistance for needy families; women, infants, and children nutrition program; Medicaid; military recruitment; and assistance to the disabled as provided by the Department of Human Services. (SDCL 12-4-2)

Every person residing within the state who has the qualifications of a voter prescribed by § 12-3-1 or 12-3-1.1, or who will have such qualifications at the next ensuing municipal, primary, general, or school district election, shall be entitled to be registered as a voter in the voting precinct in which he resides. (SDCL 12-4-1) The county auditor shall provide mail registration cards along with instructions on how to properly register voters to private entities and individuals. Each private entity or individual shall provide information to the voter being registered on how the voter may contact such private entity or individual to determine the status of the voter's registration. (SDCL 12-4-3) The auditor will provide the prescribed forms, blanks and other supplies necessary to carry out the provisions of Chapter 12-4.

The county auditor shall enter in the master registration file the names of all eligible persons who have had their completed applications for registration and mail registration cards received by any county auditor or any local, state, or federal agency responsible for conducting voter registration under this chapter not later than 5:00 p.m. fifteen days preceding the election. However, any completed mail registration card mailed to the appropriate county auditor and postmarked not less than thirty days preceding an election shall be added to the registration file. Voter registrations completed at any local, state, or federal agency during any given week commencing on Tuesday through the following Monday shall be sent to the appropriate county auditors no later than the following Wednesday. The State Board of Elections may promulgate rules, pursuant to chapter 1-26, for the alternative transmission of voter registration information by computer from the agency to the secretary of state. The name of any voter who has registered to vote by 5:00 p.m. fifteen days preceding the secondary election shall be added to the file used for the secondary election. (SDCL 12-4-5)

An applicant for registration shall answer questions and sign the oath as required on the form prescribed by the State Board of Elections. An applicant for registration at a driver's license station shall also sign a signature card prescribed by the Department of Public Safety. This signature shall be digitized and used to prepare the registration card as provided in § 12-4-5. If an applicant is unable to write his or her name, the applicant shall make a mark, the applicant's name being written near such mark, and written by a person who writes his or her own name as a witness. (SDCL 12-4-6)

For the purpose of expediting work of the county auditor, to promote uniformity in registration, and for the preparation of abstracts and other forms to be used by election boards, registration records shall be prescribed by the State Board of Elections. The State Board of Elections may require such

information, on registration records, as is necessary to effectuate the state and federal election laws. (SDCL 12-4-8) In lieu of forms for registration prescribed under § 12-4-8, requests for absentee ballots submitted in accordance with the Uniformed and Overseas Citizens Absentee Voting Act (UOCAV) (42 U.S.C. § 1973ff) shall be sufficient for registration purposes. The county auditor shall make and file the index card for the master file and attach the card thereto and a photocopy shall be supplied to the election board of the precinct for the purposes of § 12-19-2. (SDCL 12-4-8.1)

The county auditor shall maintain and safeguard a file of voters in computer format that contains each person registered in each voting precinct within the county. This file shall be known as the master registration file and shall be, at all times during office hours, open to public inspection. However, public access to social security numbers and driver license numbers contained in the master registration file shall be prohibited. Public access to each voter's day and month of birth shall be restricted. Public access to the voter's year of birth is not restricted. The master registration file shall contain all information from each voter's registration card except the description of the location of the voter's residence. The master registration file shall also include the date of the last election the voter has voted in and when the voter's information was last updated. The master registration file may also contain additional voter history information. (SDCL12-4-9)

The county auditor shall provide from the master registration file a separate list of the names and addresses of all registered voters in each voting precinct as established pursuant to chapter 12-14, § 9-13-16, or 13-7- 11 in the county, which shall be known as the precinct registration list. The list for any voting precinct shall be designed so that each name can be distinctly marked whenever the registrant presents himself or herself for voting and shall contain a space in which may be recorded the record of any challenge, affidavit, or other information as may be required. Each entry shall be made by the precinct superintendent or precinct deputies when the voter presents himself or herself for voting. (SDCL 12-4-10)

Whenever so requested, the county auditor furnishes to the clerk of the United States district Court for the District of South Dakota, at no cost to the county, the current precinct registration lists or certified copies of it referred to in SDCL 21-4-10 for all election precincts in the county whenever such lists are required by said clerk of the United States District Court in furtherance of a plan for random jury selection in the federal courts. Within thirty days after receipt of such precinct registration lists, the clerk of the United States District Court shall return the lists to the county auditor.

If the boundaries of any election precinct are changed, the county auditor shall immediately change the registration file to correctly show the names and the other relevant voting information required upon registration of the voters who are residents of the election precinct. (SDCL 12-4-11)

Any new registrant previously registered elsewhere shall be required to sign an authorization which shall be forwarded by the registration official to the auditor of the county of former registration, or other appropriate registration official, who shall remove the registrant's name from the registration file. (SDCL 12-4-12)

The South Dakota department of health, in conjunction with preparation of abstracts of vital statistics records made pursuant to SDCL 34-25-46, shall prepare an abstract for the county auditor, listing names by marriage, annulment, divorce or judgment of a court, and those who may have died.

The clerk of courts shall, within fifteen days after the close of each month, prepare and deliver to the auditor an abstract from the records of the names of persons declared mentally incompetent in the preceding month. The notice shall be sent to the county auditor of the county in which the person declared incompetent resides. The county auditor shall remove from the master registration list the names of persons identified in accordance with the information provided pursuant to this section and

names of those sentenced to imprisonment in the federal penitentiary system and may remove names published in an obituary.

Voter registration records maintained in or transmitted to the statewide voter registration file shall be matched with the death records maintained as vital statistics records by the Department of Health and the records of felony convictions maintained by the Unified Judicial System. Any voter identified as deceased or who receives a felony sentence to the adult state penitentiary system including a suspended execution of a sentence shall be removed from the voter registration records. The State Board of Elections may promulgate rules, pursuant to chapter 1-26, determining how voter registration records shall be matched. This section is effective on January 1, 2004. (SDCL 12-4-18)

Any voter in the active registration file who has failed to vote, has not updated the voter's registration information, and has not replied to a confirmation mailing at least once during the last preceding four consecutive years shall be sent a non-forwardable return-if-undeliverable address verification request. If the request is undeliverable then a confirmation mailing prescribed by the State Board of Elections shall be sent. If a county auditor has determined through a national change of address licensee of the United States Postal Service that the address of a voter who is to be sent an address verification request has changed, that mailing may be omitted. This process shall be performed by each county auditor between January first and November fifteenth of each odd-numbered year. (SDCL 12-4-19) The confirmation mailing notice shall be a double postcard stating that the voter's registration may be canceled if the card is not returned. In addition, the card shall state that if the information on the return card is correct, the voter must sign and return the card within thirty days or the voter's registration will become inactive. The card shall also state that if the information on the return card is not correct, the voter shall send the correct information to update the voter's registration or the voter's registration will become inactive. If the card is returned indicating a new address in another county in South Dakota or another state, the card shall serve as a cancellation authorization. The card shall also give information on reregistering if the voter has moved to another county or state. The card shall give the information about the voter as it appears in the registration records. (SDCL 12-4-19.1) If the card is not returned to the county auditor within the stated time limit or is undeliverable, the county auditor shall move the voter to an inactive registration file. (SDCL 12-4-19.2)

The county auditor shall complete and make available to the official charged with the conduct of a local election at least one day preceding the election a precinct registration list and the person in charge of the election shall deliver the list to each of his superintendents of election. (SDCL 12-4-24)

Upon request the county auditor shall provide at their actual cost no more than five copies of precinct registration lists to the chairman or central committee of each organized political party, and a copy to each candidate requesting them, by the first Tuesday of the month preceding an election. (SDCL 12-4-24.1)

At the time of printing the official primary election ballots, the county auditor shall also have printed in like number, and for each political party, separate ballots upon which party voters may vote for precinct committeeman and for precinct committeewoman of their political party. These ballots shall be furnished to any election precinct having a contest for such position at the same time with the other election supplies. The form of these ballots shall be prescribed by the State Board of Elections. (SDCL 12-5-8)

Any person may have his or her name withdrawn from the primary election by making a written request under oath. The request shall be filed with the officer with whom the nominating petition was filed pursuant to § 12- 6-4, not later than the second to the last Tuesday in March at five p.m. If the request is mailed by registered mail by the second to the last Tuesday in March at five p.m., the request

is properly filed. No name that is withdrawn pursuant to this section may be printed on the ballots to be used at the election. (SDCL 12-6-8.1)

At all primary elections at which candidates for judicial office are to be nominated and a primary is required there shall be prepared and furnished by the several county auditors, separate ballots upon which shall be placed the names of the candidates for such offices, which ballots shall be entitled "nonpolitical judiciary ballot" and shall contain no other designation. The names of all candidates shall be placed thereon without any party designation in the order designated by the secretary of state. (SDCL 12-9-12) The form of the nonpolitical judiciary ballot shall be prescribed by the State Board of Elections. (SDCL 12-9-13)

The county auditor or other local election official charged with the conduct of local elections shall give notice of the offices that are to be filled by nomination or by declaration and the deadlines for filing in all official newspapers at least once each week for two consecutive weeks, the last publication to be not less than ten nor more than fifteen days before the deadline for filing. That same official shall give a further notice of each election stating the date and time of the election and designating polling places in all official newspapers at least once each week for two consecutive weeks, the last publication to be not less than four nor more than ten days before the election. However, for any secondary election as provided for in § 12-6-51.1, one notice shall be published along with a copy of the ballot in each of the newspapers in the state which publish on Saturday and Sunday. The secretary of state shall direct the newspapers to publish the ballot and notice on the eleventh or twelfth day after the primary election. The secretary of state shall pay all costs of publication. (SDCL 12-12-1)

The county auditor shall, on or before the first day of October of each year when there is a general election, mail to each official newspaper of the county a copy of all measures and questions as certified to him pursuant to § 12-13-1. (SDCL 12-13-2)

Except as provided in SDCL 12-15-5 or SDCL 12-17A-45, the county auditor shall, not less than twenty days before any primary election (except a presidential primary) appoint three judges of election, two clerks of election and judges and clerks of the canvassing board of such board be appointed pursuant to SDCL 12-15-14 or SDCL 12-15-14.1 for each of the several voting precincts of the county and shall designate one judge of elections and one judge of the canvassing board as superintendent of their respective boards. The auditor shall make the appointments from lists of names submitted by the county central committee of each party. In case no names are presented, the county auditor shall use their own discretion. The superintendent, other judges and the clerks so appointed also serve for the ensuing general election or any general or local election to be held within the next two years. In a presidential primary the auditor shall appoint one judge and two clerks of election. (SDCL 12-15-1)

The county auditor shall provide printed ballots for every election in which the voters of the entire county participate. Except as provided in § 12-6-9, printed ballots for a primary election shall contain the name of every candidate who has filed for nomination and is approved. The printed ballots for the election of officers shall contain the name of every candidate whose nomination has been certified or filed with the county auditor in the manner provided by law unless they are deemed elected by having no opposition. The names of the candidates shall appear on the ballot exactly as listed in the declaration of candidacy of the candidates' nominating petitions. Sample ballots shall be printed on paper of a different color from the official ballot but in the same form. The sample ballots and official ballots shall be printed and in the possession of the county auditor not later than six weeks prior to a primary or general election. The county auditor shall also prepare the necessary ballots if any question is required to be submitted to the voters of the county. Ballots for general elections shall be of the style and form prescribed in §§ 12-16-2 to 12-16-11, inclusive. (SDCL 12-16-1)

Any candidate who has been duly nominated to an elective office except State Legislature, political or nonpolitical, having no opposing candidate at the general election shall automatically be elected and the county auditor or secretary of state, as the case may be, shall, following the official canvass, issue a certificate of election to such candidate and his name shall not be printed on the general election ballot. (SDCL 12-16-1.1) This section is inapplicable to the election of a constitutional public officer and unopposed conservation district supervisor candidates. (AGR No. 72-48 and SDCL 38-8-39.1)

The county auditor shall, not later than the opening of the polls on the day of the election, cause to be delivered to the superintendent of election of each precinct the proper number of ballots provided for the use of the voters of such precinct at such election. The same shall be delivered in sealed packages, with marks on the outside of each package clearly stating the polling place for which it is intended, together with the number of ballots enclosed. Receipts for ballots, showing the number delivered, shall be given by the superintendent of election, which receipts shall at once be forwarded to the county auditor. (SDCL 12-16-18) The ballots, together with all other election supplies may be delivered to the precinct superintendent or precinct deputy for each precinct at the time the precinct superintendent and precinct deputies are called together to receive instructions pursuant to § 12-15-7. If any precinct superintendent or precinct deputy from that precinct is not present to receive instructions, the ballots, election supplies, and the ballot boxes for the precinct shall be delivered to the sheriff for delivery to the precinct superintendent. (SDCL 12-16-19)

The county auditor shall provide printed ballots for every election in which the voters of the entire county participate. Except as provided in § 12-6-9, printed ballots for a primary election shall contain the name of every candidate who has filed for nomination and is approved. The printed ballots for the election of officers shall contain the name of every candidate whose nomination has been certified or filed with the county auditor in the manner provided by law unless they are deemed elected by having no opposition. The names of the candidates shall appear on the ballot exactly as listed in the declaration of candidacy of the candidates' nominating petitions. Sample ballots shall be printed on paper of a different color from the official ballot but in the same form. The sample ballots and official ballots shall be printed and in the possession of the county auditor not later than six weeks prior to a primary or general election. The county auditor shall also prepare the necessary ballots if any question is required to be submitted to the voters of the county. Ballots for general elections shall be of the style and form prescribed in §§ 12-16-2 to 12-16-11, inclusive. (SDCL 12-16-1)

The county auditor shall provide official and sample ballots to each precinct in the county. The quantity provided for a primary election shall be at least ten percent more than the number of votes cast for the gubernatorial candidate of the respective parties in the preceding gubernatorial primary election. The quantity provided for a general election shall be at least ten percent more than the number of votes cast for all candidates for Governor as shown by the returns of the last preceding gubernatorial election. The county auditor shall also provide and retain in that office an ample supply of all official ballots, and if at any time before or during an election, an additional supply for any precinct shall be requested by the precinct superintendent, the county auditor shall immediately cause to be delivered, to the precinct superintendent, a supply of extra official ballots. If the supply of official ballots has been completely exhausted, the county auditor may make emergency substitution by delivering or authorizing the use of sample ballots or photocopies of the official ballot. The election board shall account for any sample ballots or photocopies authorized to be used. (SDCL 12-16-17)

The county auditor shall post sample ballots in a manner that can be plainly seen and read by the public. (SDCL 12-16-15) The county auditor shall publish, in each official newspaper of the county, facsimiles of the official ballots of each election in which the voters of the entire county participate. The

facsimile shall be published once in each legal newspaper in the calendar week prior to each election. (SDCL 12-16-16)

The county auditor shall cause to be printed in large type on cards in the English language and such other languages as may be deemed necessary, instructions for the guidance of voters in preparing their ballots in such form as prescribed by the State Board of Elections and deliver them with the ballots in sufficient numbers to meet the requirements of § 12-16-25. (SDCL 12-16-23)

Before opening the polls the county auditor or officer charged with the conduct of a local election shall deliver to the precinct superintendent of each precinct within the county, for use at the polling place of the precinct, a rubber stamp. The stamp shall contain the words, official ballot, the name or number of the election precinct, the name of the jurisdiction holding the election, and the date of the election. The date may be omitted if it is pre-printed on all ballots for the election. The stamp and other supplies for the election shall be delivered and receipted for by a member of the precinct election board in the manner and at the time as provided in this chapter for the delivery and receipt of packages of ballots. (SDCL 12-16-30)

The county auditor, on receipt of the unused, defective, or spoiled ballots, and the statement mentioned in § 12-18-32, shall carefully compare the same with the record in his office of the number of ballots sent to such election precinct. If the same are not accounted for in the statement before mentioned, he shall at once notify the person sending the same, who shall, with such county auditor, recount the unused, defective, and spoiled ballots and correct, if possible, such errors, if any there be, in such count or statement. (SDCL 12-18-33)

Upon receiving an application for absentee ballots, the person in charge of an election shall, within forty-eight hours, or if ballots are not then on hand, then within forty-eight hours after receipt of the ballots, after confirming from the master registration file that the applicant is registered as a voter pursuant to chapter 12-4, enclose one of each of the official ballots, a set of instructions on absentee balloting, and an unsealed return envelope. All of the enclosures shall be sealed in an envelope addressed to the applicant at the place stated in the application. If a registration form is received simultaneous with an absentee ballot request and prior to the registration deadline, the absentee ballot provided shall be based on the submitted registration form. (SDCL 12-19-3) the envelope is then delivered personally to the applicant or mailed as detailed in SDCL 12-19-5.

The confirmation mailing notice shall be a double postcard stating that the voter's registration may be canceled if the card is not returned. In addition, the card shall state that if the information on the return card is correct, the voter must sign and return the card within thirty days or the voter's registration will become inactive. The card shall also state that if the information on the return card is not correct, the voter shall send the correct information to update the voter's registration or the voter's registration will become inactive. If the card is returned indicating a new address in another county in South Dakota or another state, the card shall serve as a cancellation authorization. The card shall also give information on reregistering if the voter has moved to another county or state. The card shall give the information about the voter as it appears in the registration records. (SDCL 12-4-19.1) If the card is not returned to the county auditor within the stated time limit or is undeliverable, the county auditor shall move the voter to an inactive registration file. (SDCL 12-4-19.2)

An absentee voter desiring to vote by mail may apply to the person in charge of the election for an absentee ballot. The application or request shall be made in writing and be signed by the applicant and shall state the applicant's voter registration address. The application or request shall contain an oath verifying the validity of the information contained in the application or request. The oath shall be administered by a notary public or other officer authorized by statute to administer an oath. If the application or request does not contain an oath, the application or request shall be accompanied by a copy of the voter's identification card as required by § 12-18-6.1. The copy of the voter's identification

card shall be maintained by the person in charge of the election. However, the voter's identification card is not available for public inspection. The application or request may be used to obtain an absentee ballot for all elections in that calendar year conducted by the jurisdiction receiving the application or request if so indicated. If the application or request is from a voter identified as being covered by the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff-1) as of January 1, 2006, an absentee ballot shall be provided to the voter for each federal election through the next two general elections. The ballot shall be sent to the voter's residence, as shown in the voter registration file or any temporary residence address designated in writing by the voter, at the time of applying for the absentee ballot. The person in charge of the election shall stamp the application with the date it was received. The person in charge of the election shall preserve a record of the name, mailing address, and voting precinct of each applicant and, except as provided by § 12-19-45, deliver the record to the superintendent of the election board of the home precinct of the applicant. (SDCL 12-19-2)

If there is any nursing facility, assisted living center, or hospital, as defined in § 34-12-1.1, within any county from which there might reasonably be expected to be five or more absentee applications, the county auditor shall notify the person in charge of that facility and the chair of the county central committee of each party and any other person who has filed a request to be notified of the date and time at which representatives of the auditor's office will be present to assist the residents of that facility to vote, utilizing the absentee procedure. Any political party, independent candidate, and nonpolitical candidate may assign a person to accompany the auditor's representatives. At the date and time announced, the auditor's representative and the representatives of the parties, independent candidates, and nonpolitical candidates shall deliver ballots to and assist all persons at that facility who desire such assistance and who have applied for absentee ballots. This section applies only to a general election. If a person in charge of an election conducts absentee voting at a nursing facility, assisted living center, or hospital as defined in § 34-12-1.1, the voter shall complete a combined absentee ballot application/return envelope and the identification and affidavit requirements provided in § 12-19-2.1 are waived. (SDCL 12-19-9.1)

Except as provided in § 12-20-17, the county auditor shall tabulate election returns as rapidly as received and make the result available for the information of the public, but such returns are not the official returns. The county auditor shall enter the information into the central election reporting system by using any computer located in a county office which is properly configured and linked to the central state computer immediately following the tabulation of each precinct. (SDCL 12-20-13)

The county auditor shall keep the ballot boxes and poll books in the same condition as when received, until the meeting of the county canvassing board, when he shall deliver the poll books to such board. A violation of this section is a Class 6 felony. (SDCL 12-20-32)

The county auditor shall immediately transmit by mail, fax, or electronic means to the secretary of state a certified copy of the official county canvass of votes prepared pursuant to § 12-20-38 which shall be used for the official state canvass. The certified copy shall bear a visible county seal. If the copy is faxed or sent by electronic means, the original certified copy shall also be mailed or hand delivered to the secretary of state. The certified copies shall be microfilmed to become permanent records of the State of South Dakota and be kept by the secretary of state. (SDCL 12-20-38.1)

The county auditor, immediately on the due filing of any petition for a recount or upon receipt from the secretary of state of notice of such filing with the secretary of state, shall notify in writing, with the seal of the auditor's office, the presiding judge of the circuit court for the auditor's county. The presiding judge shall appoint a board, pursuant to § 12-21-2, for each county in the circuit in which a recount is to be conducted. The presiding judge may appoint the board anytime within thirty days prior to a primary or general election or upon the filing of the petition for recount. The board shall then convene in the office of the county auditor on the second Monday at nine a.m. following the filing of the

petition. However, if the second Monday is a legal holiday, the board shall convene at nine a.m. of the day following. The county auditor shall provide the recount board with laws, rules, and forms to use in conducting the recount. The board shall then proceed with the recount. (SDCL 12-21-20)

4.208 Sheriff

The sheriff shall keep and preserve the peace within his county, for which purpose he is empowered to call to his aid such persons or power of his county as he may deem necessary. He must pursue and apprehend all felons, and must execute all writs, warrants, and other process from any court or magistrate which shall be directed to him by legal authority. (SDCL 7-12-1) The sheriff shall keep his office at the county seat, serve or post all notices he may receive from the county auditor or the board of county commissioners, and perform such other duties as are prescribed by the laws of this state. (SDCL 7-12-2) The sheriff shall attend the sessions of the circuit court and the sessions of the board of county commissioners when required by the board to attend. (SDCL 7-12-3) The sheriff is not required to be at or near the office during “office hours”. (AGR No. 70-31)

The sheriff is hereby authorized and directed to remit to the county treasurer all fees collected for deposit in the county general fund. (SDCL 7-12-25) Notwithstanding § 7-12-25, all fees and travel expenses charged by the sheriff under the provisions of § 7-12-18 shall be deposited in a fund known as the "joint law enforcement fund," for use only by the joint municipal-county law enforcement commission if such commission exists in the county. (SDCL 7-12-25.1)

All claims for reimbursement of the sheriff, deputies, and clerks arising from official duties of such county officials, as provided by law, shall be paid from the general fund of the county by the board of county commissioners. (SDCL 7-12-27)

Salary payable to the sheriff is found in SDCL 7-12-15. Fees and traveling expenses chargeable by the sheriff are found in SDCL 7-12-18. Any person who is charged any fee and traveling expenses by a sheriff shall make payment to the county sheriff including, but not limited to, the fees provided in § 7-12-18. The sheriff shall keep a record of all fees collected and remit the fees to the county treasurer in accordance with the timeframe established by the county commission. (SDCL 7-12-19.1)

All judgments rendered against the sheriff, deputies, and clerks by reason of any official duties performed by the sheriff, deputies, and clerks shall be paid by the board of county commissioners. (SDCL 7-12-26)

The board of county commissioners shall have power to purchase and pay premiums on insurance covering and insuring county peace officers, including sheriff, which insurance shall insure against personal liability as a result of errors and omissions in the performance of official duties. The board of county commissioners shall purchase and pay premiums on such insurance for deputies and employees of those county peace officers for which the board may determine the insurance necessary. The premiums shall be paid from the county general fund. Minimum liability limits for such insurance necessary, shall be fixed by the attorney general. (SDCL 7-12-26.1)

If any sheriff or other officer serves any summons, subpoena, bench warrant, venire, or other process in any action to which the state is a party, the officer shall be required to endorse upon the writ or process or upon a paper attached thereto, at the time he makes his return of service thereon, a statement of his fees for the service, the number of miles traveled, and the amount of his mileage; and in case he shall fail to make his return with the statement and file the same with the clerk of the court from which the process issued, before judgment shall be pronounced in the action to which the process relates, he shall receive no fees for the service, and the county commissioners of the county where the service is performed are prohibited from allowing the same. No fee may be required of a county, its officers or board of county commissioners in any action commenced by the county. (SDCL 7-12-20)

The sheriff cannot recover travel expenses for merely patrolling the highways. It would be the sheriff's duty to investigate and make arrests, however, when acting in good faith on reasonable complaint and information that traffic violations are being committed. Thus when a complaint has been made or information given that traffic violations, including speeding and reckless driving, are being committed at a certain time at a designated portion of the public highways, the sheriff's necessary and actual expenses upon approval by the state's attorney, would be proper and legitimate charge against the county. (AGR 1957-58, pp. 50-51)

The sheriff shall charge and remit the following:

(1) For serving an order of arrest with commitment or bail bond and return, twenty-five dollars;

(2) For serving summons, complaint, warrant of attachment, affidavit, notice and undertaking in claim and delivery, or injunction, order to show cause, citation, or other process, and return of the instrument, twenty-five dollars for all such process or instruments served at the same time upon the same person regardless of the capacities in which such person is served. However, for all such process or instruments served upon another such person at approximately the same time at the same place, five dollars;

(3) For serving subpoena for witness, each person, ten dollars;

(4) For traveling expenses in a motor vehicle, a minimum mileage allowance of at least three cents over and above the rate set for state employees by the State Board of Finance but not more than six cents above the rate set for state employees by the State Board of Finance, as determined by the board of county commissioners, for each mile actually and necessarily traveled by motor vehicle. For traveling expenses in a private plane, a mileage allowance of ten cents above the rate set for state employees by the State Board of Finance for each mile actually and necessarily traveled by private plane. However, actual cost may be paid for travel by train, bus, plane, or other commercial vehicle;

(5) For serving writ of execution and return of the instrument, whether satisfied or unsatisfied, thirty-five dollars;

(6) For levying writ of possession, twenty-five dollars. However, if the sale of the property levied upon is not subsequently held, the actual costs or expenses associated with levying writ of possession shall be paid;

(7) For advertisement of sale in newspaper, in addition to printing, twenty-five dollars;

(8) For posting notices of sale of real property, twenty-five dollars, and mileage;

(9) For executing writ or order of partition, twenty-five dollars;

(10) For making deed for land sold on execution or order of sale, fifty dollars except no fee is charged when the deed only requires the sheriff's signature;

(11) In addition to the applicable fees and expenses, a commission on all money received and disbursed by the sheriff on execution or order of sale, order of attachment, decree or on sale of real property or personal property, for each dollar not exceeding four hundred dollars, eleven cents; for each dollar above four hundred dollars, and not exceeding one thousand dollars, seven cents; for each dollar above one thousand dollars, and not exceeding fifteen thousand dollars, five cents; for each dollar above fifteen thousand dollars, and not exceeding twenty-five thousand dollars, three cents. However, in no case may the commission be less than twenty-five dollars. The commissions shall be included as a part of the cost of execution, order of sale, order of attachment, decree, or on sale of real or personal property, which shall be paid by the debtor out of the proceeds. However, in all cases of redemption prior to the sale, the sheriff is entitled to the commission as stated above, to be paid by the redemptioner as a cost of the redemption;

(12) For cases in the circuit court, if persons, in whose favor an execution or order of sale is issued, bid in the property sold on execution or decree, the sheriff or officer making the sale shall

receive the following compensation: If the amount for which the property is bid in is one thousand dollars or less, the sum of twenty dollars. If the amount for which the property is bid in is more than one thousand dollars, the sum of fifty dollars;

(13) For making a sale of real property under a foreclosure of mortgage by advertisement, the same fees as for the sale of real property under a judgment of foreclosure and sale of real property; and

(14) If personal property is taken by the sheriff on execution or warrant of attachment and applied in the satisfaction of the debt without sale, the same percentage on the appraised value of the property as in the case of a sale and all additional reasonable and necessary costs and expenses incurred in executing the duties of sheriff including expenses associated with the removal of property from the premises.

No fee may be charged in any action under § 25-10-3, 25-10-6, 22-19A-8, or 22-19A-12.The fees established pursuant to this section shall be used for law enforcement purposes. (SDCL 7-12-18) AGR 1959-60, pp. 175-176)

The sheriff is allowed for collecting taxes the following fees: twenty-five dollars for making the sheriff's return on the sheriff's warrant of authority; fifteen dollars for each levy; ten dollars for each sale and necessary costs of distress and sale, which fees and costs shall be collected from the tax debtor or the tax debtor's property. If actual travel is made in collecting taxes, the sheriff shall also collect from the tax debtor or the tax debtor's property an additional penalty, in lieu of mileage, equal to fifteen percent of the amount of tax and interest due, which, with all fees and costs collected, shall be credited to the general fund of the county. The sheriff shall receive from the county mileage for each mile actually and necessarily traveled at the rate provided by law. However, the sheriff is not allowed mileage for collecting taxes within the corporate limits of the county seat. (SDCL 10-22-28) The treasurer shall, on the first day of each month, furnish the sheriff with a certified list of his fees, costs, and mileage provided for in § 10-22-28, and the sheriff shall file such list with the county auditor as a bill against the county to be audited and paid as other claims against the county. (SDCL 10-22-29)(AGR 1961-62, pp. 58-29) (AGR 1959-60, p.9)

The county shall pay all necessary expenses, including travel, incurred in the transportation of adult and juvenile prisoners to state correctional institutions. The county may be reimbursed by the state from funds appropriated for such purpose. (SDCL 7-12-22)

In case of war, insurrection, rebellion, riot, invasion, resistance to the execution of the law of this state or of the United States, or in the event of public disaster or upon application of any marshal of the United States, or the mayor of any first or second class municipality or any sheriff in this state, the Governor may order into active service all or any portion of the national guard. (SDCL 33-9-1) If the Governor is absent or cannot be immediately communicated with, any civil officer named in § 33-9-1 may, if the civil officer deems the occasion sufficiently urgent, apply electronically, telephonically, or in writing to the commanding officer of any unit of the National Guard, who may, upon approval by the adjutant general, if the danger is great and imminent, order out of the unit such South Dakota National Guard members as the commanding officer deems necessary to the assistance of the civil officer. (SDCL33-9-2) Any order pursuant to § 33-9-1 or 33-9-2 shall be delivered to the commanding officer and immediately communicated by the commanding officer to each subordinate officer. Each company commander receiving the order shall immediately communicate the substance of the order to each member of the company being called to duty. If any such member cannot be found, a notice in writing containing the substance of the order shall be left at the last and usual place of residence of the member with some person of suitable age and discretion, to whom its contents shall be explained. (SDCL 33-9-3) (AGR 1957-58, p.88)

A deputy sheriff is an employee of the county. The term "employee" with certain exceptions, includes most officers of any political subdivision of the state for social security purposes. (SDCL 3-11-2(3), 7-12-9)

The county board may approve a supplemental budget for the sheriff's office after the first of January for claims resulting from a deficit in the budget for that office. Budget appropriations do not revert until the thirty-first of March following the year for which the regular budget is adopted. (AGR 1955-56, pp. 33-34)

Approval of a sheriff's expense voucher is usually required by the state's attorney; the claim need not disclose all facts and circumstances required of an ordinary claim as secrecy is an important element in crime investigations. The allowance of the claim is a matter solely within the sound judgment of the county commissioners but when the voucher is approved by the state's attorney, it should be taken as a proper claim. (AGR 1953-54, pp. 168-169) However, no allowance is made to the sheriff for travel expense in unauthorized patrolling and general investigations where reasonable complaints have not been made. In other words, the mere contention of law violators is not sufficient basis for mileage charges for patrolling and investigation. (AGR 1953-54, pp. 197-198)

4.209 Jails and Determination of Jail Expenses for Prisoners

There shall be established and maintained in every county, by authority of the board of county commissioners and at the expense of the county, a jail for the purposes stated in this chapter, except as provided in § 24-11-3. (SDCL 24-11-2) If there is no jail or juvenile detention facility in the county, or if the jail or juvenile detention facility in the county is crowded, unsafe, or otherwise insufficient to conform to the requirements of this chapter, every judicial or executive officer of the county who has the power to order, sentence, or deliver any person to the county jail or juvenile detention facility may order, sentence, or deliver such person to the jail or juvenile detention facility of any near or adjoining state, Indian reservation, county, organized township, or municipality, pursuant to a written agreement to house such prisoner. The written agreement shall contain provisions addressing liability issues and facility standards and shall also contain appropriate provisions assuring that the agency housing the prisoner shall release the prisoner to the county from which the prisoner was committed within two days of receiving a request from the committing county. Any written agreement with a federally recognized Indian tribe shall receive approval from the Bureau of Indian Affairs prior to the delivery of any prisoner. The county from which the prisoner was committed shall pay to the agency housing the prisoner all expenses of keeping and maintaining the prisoner in the jail or juvenile detention facility, including the cost of building depreciation, administration, and a reasonable charge for obsolescence of the facility and all other tangible and intangible costs. (SDCL 24-11-3)

Any combination of counties or municipalities of this state may enter into an agreement pursuant to chapter 1-24 for the creation of an area jail or juvenile detention facility compact which may be a separate legal entity. In addition to the provisions of chapter 1-24, an agreement pursuant to this section may be for any period of time and may provide for liquidated damages to be imposed upon any party withdrawing without the consent of all other parties to the agreement. The liquidated damages may not exceed the minimum contribution agreed to by the withdrawing party to termination of the agreement reduced to present value. The compact may own, purchase, construct or otherwise acquire ownership of jail or juvenile detention facilities located within any of the parties. The compact may issue revenue bonds, enter into lease, lease-purchase and sale, and lease-back agreements, either as lessee or lesser, in the manner provided in §§ 7-25-19 and 7-25-20, or take any other steps necessary to assist in funding jail or juvenile detention facilities. Operation of the jail or juvenile detention facility shall remain under the authority of the county where the facility is located or by agreement with a municipality. Any

county or municipality may enter into lease or lease-purchase agreements with an area jail or juvenile detention facility compact pursuant to §§ 7-25-19 and 7-25-20.

The governing body of any compact, municipality or county may contract with a private entity to place inmates or prisoners in a detention facility, jail, correctional facility, work camp or related facility operated by a private entity. The governing body of the compact, municipality or county or an elected or appointed peace officer who serves in the municipality or county has a financial interest.

The governing body of any compact, municipality or county may construct with a private entity to provide for the financing, design, construction, leasing, operation, purchase, maintenance or management of a jail, correctional facility, detention center, work camp or related facility. The governing body of any compact, municipality or county may not award a contract under SDCL 24-11 unless it requests proposals by public notice and not less than thirty days from such notice receives a proposal that meets or exceeds the requirements specified in the request for proposals. Before the governing body of any compact, municipality or county enters into a contract under SDCL 24-11, the governing body of the compact, municipality or county shall receive the written approval of the sheriff or other designated law enforcement official of such municipality or county, which written approval shall not be unreasonable withheld.

A contract made under SDCL 24-11-3:

(1) Requires the private entity to operate the facility in compliance with minimum standards, to the extent such standards may be applicable, adopted by the department of corrections or any other applicable state agency having jurisdiction with respect thereto and, to the extent otherwise required, receive and retain a certification of compliance from such agency.
(2) Provide for regular, on-site monitoring by the sheriff or other designated law enforcement official.
(3) If the contract includes construction, require a performance bond approved by the governing body that is adequate and appropriate for the proposed construction contract.
(4) Provide for assumption of liability by the private entity for all claims arising from the services performed under the contract by the private entity.
(5) Provide for an adequate plan of insurance for the private entity and its officer, guards, employees and agents against all claims, including claims based on violation of civil rights, arising from the series performed under the contract by the private entity.
(6) Provide for a plan for the purchase and assumption of operations by the compact, municipality or county in the event of the bankruptcy of the private entity.
(7) If the contract involves conversion of an existing correctional facility to provide private entity operation, require the private entity to give preferential consideration in hiring to employees at the existing facility who meet or exceed the private entity's qualifications and standards for employment in available positions.
(8) Require the private entity to provide health care benefits comparable to that or the compact, municipality or county.
(9) Provide for an adequate plan of insurance to protect the compact, municipality or county against all claims arising from the services performed under the contract by the private entity and to protect the compact, municipality or county from actions by a third party against the private entity, its officers guards, employees and agents as a result of the contract
(10) Contain comprehensive standards for conditions of confinement and annual review of the programs for compliance.

A private entity operating under a contract authorized by SDCL 24-11-2 or 3 is not entitled to claim sovereign immunity in a suit arising from the services performed under the contract by the private

entity. However, this section does not deprive the private entity or the compact, municipality or county of any benefits of any law limiting exposure to liability, setting a limit on damages or establishing defenses to liability. This section shall be liberally construed for the public purposes of providing additional jails, correctional facilities, detention centers, work camps or related facilities and for authorizing contracts with private parties in connection therewith.

The governing body or board of county commissioners is responsible for securing bed clothing, laundry, board, nursing when required, and all necessaries for the comfort and welfare of the prisoners. If a prisoner or any person under arrest receives medical treatment pursuant to this section for which the governing board or board of county commissioners is liable, the receipt of such medical treatment shall, as to the person receiving such treatment, operate as an assignment by operation of law of any rights to medical support, insurance proceeds, or both, that the prisoner or person under arrest may have for himself. Any rights or amounts so assigned shall be applied against the cost of medical care paid under this section. Any payments made under this section for medical care not recovered shall constitute a lien pursuant to § 28-14-1. (SDCL24-11-21) The governing body or commission responsible for the operation of a jail shall adopt written policies and procedures for the regulation of the jail on the following subjects:

(1) The cleanliness of the prisoners;
(2) The classification of prisoners by sex, age, crime, and mental illness;
(3) Beds and clothing;
(4) Warming, lighting, and ventilation of the jail;
(5) The employment of medical and surgical aid when necessary;
(6) Employment, temperance, and instruction of the prisoners;
(7) The communication between prisoners and their counsel and other persons; however, no mail censorship is to be allowed of inmates' correspondence to and from their counsel, or their designated agents;
(8) The punishment of prisoners for violation of the policies and procedures of the jail;
(9) The twenty-four hour supervision of the jail when it houses any inmate population which policies and procedures may provide for supervision by means other than the continuous personal presence of jail personnel;
(10) The training of the jailors;
(11) Such other policies and procedures to ensure the fair and humane treatment of and to promote the welfare of the prisoners; provided, that such policies and procedures shall not be contrary to the laws of this state. (SDCL24-11-23) It shall also be the duty of the board of county commissioners to visit all the jails of its county once during its regular meetings each year. (SDCL 24-11-26) The board may also charge a work release prisoner a sum not to exceed the average daily prisoner cost, to help pay for their expenses.

The judge of the circuit court may visit, inspect, and supervise all the jails in his circuit and all county and municipal officers shall comply with the orders of such court relating to jails or inmates therein, in accordance with law and the policies and procedures provided for in § 24-11-23, and the violation of any such order may be punished as a contempt of court. (SDCL 24-22-27)

4.210 Coroner

Before auditing and allowing any account of the coroner the board of county commissioners must require from him a statement in writing of any money or other property found upon persons on whom inquests have been held by him, verified by his oath, to the effect that the statement is true, and that

the money or property mentioned in it has been delivered to the legal representatives of the decedent or to the county treasurer. (SDCL 7-14-7)

The county coroner shall be reimbursed for all necessary and reasonable expenditures incurred in the discharge of his duty as shall be approved by the board of county commissioners and which shall be paid out of the general fund of the county. (SDCL 7-14-2)

The coroner shall receive fees and expenses as set by the board of county commissioners. (SDCL 7-14-1) The coroner may receive a salary which shall be set by the board of county commissioners and the coroner may be furnished with a radio by the county capable of transmitting and receiving government bands. (SDCL 7-14-8) The coroner may appoint one or more deputies and each deputy shall receive fees and expenses as determined at the discretion of the board of the county commissioners. The deputy coroner may not receive a salary. (SDCL 7-14-9)

A physician appointed to perform an autopsy shall receive a reasonable fee for services upon approval by the board of county commissioners and it will be paid out of the general fund of the county. If the coroner is a physician, he/she may personally perform such autopsy; and shall receive a reasonable fee for the services. If the death or autopsy occurs in a county other than the descendants' county of residence, the county of residence shall reimburse the county where the autopsy occurred for the cost of the autopsy, provided that the county of residence either requested the autopsy or is the site where the accident or injury leading to the death occurred.

4.211 State's Attorney

Among other duties, the state's attorney serves as the legal advisory to the county commissioners and other civil officers of the county. The state's attorney serves as the county's attorney in all court action to which the county is a party. The state's attorney has the power to begin and prosecute civil actions for the county against the county commissioners for malfeasance in office, misappropriations of public funds or other misconduct, whenever there is reasonable cause for such action, and when requested to so by a written petition signed by fifteen resident taxpayers of the county. (SDCL 7-16-8 to 7-16-15)

The state's attorney must commence an action on the director of equalization's bond for the amount of taxes lost for such willful failure or willful neglect. On trial of such action, the value of the property unassessed being shown; judgment for the amount of taxes that should have been collected thereon must be entered. (SDCL 10-3-40; AGR 1955-56, p. 237)

Whenever the death of an individual occurs under circumstances in which a coroner is authorized to hold an inquest upon the body, the state's attorney may authorize the necessary dissection for the purposes of the inquest.

A state's attorney may employ a paralegal assistant and secretarial assistance as is necessary for the efficient operation of his office. The employment of assistance is subject to prior approval of the board of county commissioners, who shall determine the compensation that the employees receive. (SDCL 7-16-7.1)

In counties of over fifty thousand population and any other county where the board of county commissioners so designates, the state's attorney shall be a full-time position and the state's attorney may not be counsel or attorney in any action, civil or criminal, in the courts of this state except when acting on behalf of his county or the State of South Dakota. (SDCL 7-16-19)

The state's attorney of a county not employing a full-time state's attorney may maintain the Office of State's Attorney at his regular business address. The board of county commissioners may provide him an allowance for fixed office overhead expenses in lieu of furnishing office space at the courthouse. (SDCL 7-16-19.1)

4.212 Vacancy in Office of State's Attorney

The circuit court, whenever there shall be no state's attorney for the county or when the state's attorney is absent or unable to attend to his duties or is adversely interested or disqualified, may appoint, by an order to be entered in the minutes of the court, some duly licensed attorney and counselor at law to perform for the time being the duties required by law to be performed by the state's attorney and the person so appointed shall thereupon be vested with all the powers of such state's attorney for that purpose; and the circuit court shall, by an order in the minutes of the court, fix his fees therefore, which amount shall be allowed by the board of county commissioners and when so ordered by the court shall be deducted from the salary of the state's attorney. Nothing in this section shall be so construed as to give the court power to permanently fill vacancies in such office. SDCL 7-16-2) It does not have the power to remove the state's attorney and appoint another attorney (State ex rel. Hooper v. Tarr, 62 SD 305, 252 NW 854 (1934)). A qualified person residing in another county may be appointed by the county board as the state's attorney if no one is qualified for the office who resided within the county (AGR 1945-46, p. 196). The office of state's attorney and the position of deputy county treasurer are incompatible. (AGR 1953-54, pp.145-146)

4.213 Fees and Expenses of State's Attorney

It shall be the state's attorney's duty, whenever he shall receive any money for fines, forfeitures, recognizance's, penalties, or costs, to deliver to the officer or person paying the same, duplicate receipts, one of which shall be filed by such officer or person in the office of the county treasurer. (SDCL 7-16-20) The state's attorney shall pay over to the county treasurer all money he may receive as such state's attorney within ten days after he receives it and shall file with the county auditor a complete list of the amount so paid showing all fees and costs received in civil actions in which the county is the successful party, as well as all fines, recognizance's, forfeitures, penalties, or costs received by him, specifying in each instance the name of each person from whom he may have received such money, the particular amount paid by each person, and the cause for which each payment was made. A state's attorney who neglects to account for or pay over the money received by him as required by this section is guilty of theft. (SDCL 7-16-21) It shall be the duty of the county treasurer, in his official name and capacity, to cause an action to be instituted upon the bond of such state's attorney for the recovery of the money so received and unpaid by him. (SDCL 7-16-22) Other than fees for child support enforcement services made upon the request of the Department of Social Services to a state's attorney under a cooperative agreement with the board of county commissioners, fees payable upon request of the Department of Social Services under a cooperative agreement with the board of county commissioners under the Violence Against Women Act, 42 USC 3796gg et seq. as of January 1, 1997, and fees payable under contract for representation of the county or its officers in civil cases and administrative proceedings outside the county pursuant to § 7-16-6, a board of county commissioners may not give or pay any fees or costs to a state's attorney as part of a salary or in addition to a salary. However, each board shall participate in the costs of the prosecution and enforcement by the state's attorney of support obligations against any responsible parent, whether of a civil or criminal nature, on a fee for service basis with the Department of Social Services. The fee is paid to the state's attorney in addition to any other compensation of the state's attorney for the performance of other public duties. A full-time state's attorney, as defined by § 7-16-19, is not entitled to receive the fees payable for child support enforcement services or services under the Violence Against Women Act authorized by this section nor is a full-time state's attorney entitled to extra compensation for representation of the

county or its officers in civil cases and administrative proceedings outside the county pursuant to § 7-16-6. (SDCL 7-16-23) If the state's attorney of one county shall be requested to go to another county or from one part to another part of his county to transact any business as state's attorney, he shall be paid by his county the amount of his necessary expenses in transacting such business in addition to the salary fixed by the county board. (SDCL 7-16-17)

4.214 Clerk of Courts

Under the Unified Judicial Court System (Cn. V and Chapter 16-2) the South Dakota Supreme Court has ordered that the clerk of courts continues to perform duties, non-judicial in nature, required by law to be performed until transferred by the Legislature to other appropriate officers or until such duties are abolished, and duties, judicial in nature, involving civil, probate or criminal procedure or remedies, prescribed by law or by order of the South Dakota Supreme Court, until further order of the Court. (SDCL 16-2-27)

*Regarding SDCL 16-13-46, Jurors compensation, each juror for each day's attendance upon the circuit court of the magistrate court shall receive forty dollars, and mileage at such rate as may be established pursuant to SDCL 3-9-1 for each mile actually and necessarily traveled, to be paid by the county. However, any juror called but not impaneled shall receive an appearance fee of ten dollars and, in addition, mileage at such rate as may be established pursuant to SDCL 3-9-1 for each mile actually and necessarily traveled. Such juror's fees, except as provided in SDCL 16-13-47, shall be paid by the court treasurer upon the presentation of warrants which warrants shall be issued by the county auditor forthwith upon filing of each juror's certificate of attendance, which certificate shall bear the endorsement or certificate of the clerk of the court in which such fees accrued to the effect that said certificate of the clerk of the court in which such fees accrued to the effect that said certificate is accurate as to the time expended and the amount of fees claimed. (*effective January 1, 1992)

4.215 County Constables

The board of county commissioners of each organized county having territory therein which is not organized into civil townships shall divide such territory into such number of districts, not exceeding eight, as it shall deem advisable, from each of which districts there may be appointed at the time specified in § 7-13-1, one constable who shall serve for a term of two years. (SDCL 7-13-3) Such county constables shall have the same powers and jurisdiction throughout the entire county as a township or other constable has within his district; such county constables may serve process and make levies in the same manner and effect as the sheriff, and conduct other official proceedings throughout the county in the same manner and effect as a township or other constable within his district. (SDCL 7-13-2) County constables may collect the same fees as are allowed sheriffs for like services. The constables shall keep a daily record of all moneys collected and file a copy of that record with the county auditor by the fifteenth day of the following month. (SDCL 7-13-4)

The board of county commissioners shall have power to purchase and pay premiums on insurance covering and insuring county peace officers, including sheriff, which insurance shall insure against personal liability as a result of errors and omissions in the performance of official duties. The board of county commissioners shall purchase and pay premiums on such insurance for deputies and employees of those county peace officers for which the board may determine the insurance necessary. The premiums shall be paid from the county general fund. Minimum liability limits for such insurance necessary, shall be fixed by the attorney general. (SDCL 7-12-26.1)

4.216 Detention of Children

A board of county commissioners shall provide by contract or otherwise for the temporary care, shelter or detention of children under this chapter and chapters 26-8A, 26-8B, and 26-8C pending the adjudication of such children. Section 26-7A-94 governs the payment of custodial costs of children. (SDCL 26-7A-25)

Any alleged child in need of supervision or alleged delinquent child who is the subject of proceedings under this chapter or chapter 26-8B or 26-8C may give bond or other security for the child's appearance before the court according to the order of the court. The court may appoint an attorney to appear and represent the child. (SDCL 26-7A-52) A board of county commissioners may provide and maintain at public expense temporary care, shelter, or detention facilities, sight and sound separated from adult prisoners, where children coming within the provisions of this chapter or chapter 26-8A, 26-8B, 26-8C, or §§ 26-11A-13 and 26-11A-14, may, if necessary or appropriate, be placed for temporary care, temporary custody, shelter, or detention as designated by the court, or temporary detention or shelter by the Department of Corrections. Sections 26-11A-19 and 26-7A-94 governs the costs of custodial care of children. (SDCL 26-7A-23)

If a board of county commissioners provides and maintains temporary care, shelter, or detention facilities under § 26-7A-23, the board may contract or enter into an agreement under the authority of chapter 1-24 with the board of county commissioners of other counties of the state to receive the children of other counties who may be ordered to be placed in temporary care, shelter or detention in appropriate facilities under the provisions of this chapter and chapter 26-8A, 26-8B, 26-8C, or §§ 26-11A-13 and 26-11A-14. The board of county commissioners determines the charges for such services to be paid by the other county, subject to §§ 26-7A-94 and 26-11A-19, and thereafter shall receive such children in its facilities according to the terms and conditions of the contract or agreement. In addition to the provisions of chapter 1-24, an agreement pursuant to this section may be for any period of time and may provide for liquidated damages to be imposed upon any party withdrawing without the consent of all other parties to the agreement. The liquidated damages, reduced to present value, may not exceed the minimum contribution agreed to by the withdrawing party upon termination of the agreement. (SDCL 26-7A-24)

4.217 Incarceration of child under fifteen

The term, jail, as used in this chapter includes any building or place provided or used by any county, municipality, or civil township for the detention of adult persons convicted or accused of the violation of any law of this state, any ordinance or bylaw of any municipality or civil township, or any rule or regulation of any board, commission, or public officer having the effect of law; or for the detention of adult persons held as witnesses or committed for contempt's, except juvenile detention facilities located outside jails and lockups and approved collocated detention facilities operated by counties. The governing body or commission responsible for the operation of a jail shall classify its jails based upon the types of persons detained therein and the maximum length of detention of persons in such jails. (SDCL 24-11-1)

No apparent, alleged, or adjudicated abused or neglected child may be securely detained at any time in a jail, lockup, or in any type of detention or temporary care facility containing adult prisoners. An apparent, alleged, or adjudicated child in need of supervision may not be securely detained in a jail, lockup, or in any type of detention or temporary care facility containing adult prisoners except for approved collocated detention centers as defined in § 26-7A-1 and as authorized in §§ 26-8B-3, 26-8B-6, and 26-7A-20. An apparent or alleged delinquent child may be held in an adult lockup or jail for up to six hours for purposes of identification, processing, interrogation, transfer to juvenile facility, or release to parents if the child is sight and sound separated from adult prisoners. In any area not designated as a

metropolitan statistical area by the United States Bureau of the Census, an apparent or alleged delinquent child may be held in an adult lockup or jail for up to forty-eight hours excluding holidays and weekends or until the temporary custody hearing, whichever is earlier, if the facility has been certified by the Department of Corrections as providing sight and sound separation of juveniles from adults and if no suitable juvenile facility is available. A child who has been transferred to adult court pursuant to § 26-11-4 or a child who is being tried in circuit court as an adult pursuant to § 26-11-3.1 may be held in an adult lockup or jail if physically separated from adult prisoners. A child who has attained the age of majority who is under the continuing jurisdiction of the court or the Department of Corrections may be held in an adult jail or lockup. A child under the age of eighteen years who has been transferred to adult court pursuant to §§ 26-11-3.1 or 26-11-4 and who has been convicted of a felony as an adult may be held in an adult jail or lockup. (SDCL 26-7A-26)

If a board of county commissioners provides and maintains temporary care, shelter, or detention facilities under § 26-7A-23, the board may contract or enter into an agreement under the authority of chapter 1-24 with the board of county commissioners of other counties of the state to receive the children of other counties who may be ordered to be placed in temporary care, shelter or detention in appropriate facilities under the provisions of this chapter and chapter 26-8A, 26-8B, 26-8C, or §§ 26-11A-13 and 26-11A-14. The board of county commissioners determines the charges for such services to be paid by the other county, subject to §§ 26-7A-94 and 26-11A-19, and thereafter shall receive such children in its facilities according to the terms and conditions of the contract or agreement. In addition to the provisions of chapter 1-24, an agreement pursuant to this section may be for any period of time and may provide for liquidated damages to be imposed upon any party withdrawing without the consent of all other parties to the agreement. The liquidated damages, reduced to present value, may not exceed the minimum contribution agreed to by the withdrawing party upon termination of the agreement. (SDCL 26-7A-24)

4.218 Circuit Court and Civil Actions

On January 7, 1975, all cases pending in the district county, municipal, justice of the peace, or police magistrate courts shall be transferred to the docket of the circuit court for the county wherein such court is located and be pending in such court, without affecting any bond or obligation in such cases. On January 7, 1975, all functions, facilities, and services of the courts shall be transferred to the circuit court for the county wherein such court is located and be continued in the circuit court. Judgments entered by those courts of limited jurisdiction but not yet satisfied, shall be enforceable in the manner provided by law for judgments of the circuit court. Civil and criminal matters pending before each of said courts shall be continued in the circuit courts and be subject thereafter to the provisions of law and rules of procedure applicable in the circuit courts. All records, funds, bonds, or any other items pertaining to the cases or facilities transferred shall be forwarded forthwith by the clerk or officer having them to the clerk of the circuit court. Cases within the jurisdiction of any court of limited jurisdiction as may be established may be assigned to such courts for disposition. (SDCL 16-6-9.1)

The presiding judge in each judicial circuit, to be appointed by the Chief Justice, subject to the rules of the Supreme Court, has administrative supervision and authority over the operation of the circuit courts, the courts of limited jurisdiction, and clerks and other court personnel in the circuit. These powers and duties include, but are not limited to, the following:

(1) Arranging schedules and assigning circuit judges for sessions of circuit courts;

(2) Arranging or supervising the calendaring of matters for trial or hearing;

(3) Appointing clerks, deputies and other personnel within the circuit to make available their services in every county in the circuit and, subject to standards established by the Supreme Court, fixing their

compensation within the limits set by § 16-2-23 with approval of the Chief Justice, and supervising the personnel in the discharge of their functions;
(4) Assigning matters and duties to clerks, and prescribing times and places at which clerks shall be available for the performance of their duties;
(5) Making arrangements with proper authorities for the drawing of jury panels and determining which sessions shall be jury sessions;
(6) Arranging for the reporting of cases by court reporters or other authorized means;
(7) Arranging for the orderly disposition of specialized matters, including, but not limited to traffic, domestic relations, and proceedings under chapters 26-7A, 26-8A, 26-8B, and 26- 8C;
(8) Promulgating a schedule of offenses for which magistrates or other designated persons may accept written appearances, waivers of trial, and pleas of guilty, and establishing a schedule of fines and bails therefore;
(9) Assigning to other circuit judges in the circuit various powers and duties in this chapter provided;
(10) Periodically reviewing the performance and application by magistrates, clerks and deputy clerks of schedules they are to follow, and correcting, with or without the request of the person affected, erroneous application thereof. To assure the availability of circuit judges in all areas of the state, the presiding judge shall arrange, so that in each county of that circuit, there shall be available a circuit judge to hold court in the county seat of each such county on at least two days each month if there are matters that warrant the presence of a judge. (SDCL 16-2-21)

Each county in the state shall provide suitable and adequate facilities for the clerk or any deputy clerk of the circuit court, including the facilities necessary to make the space provided functional for its intended use. (SDCL 16-2-25)

Thirty-five percent of all fines, penalties, and forfeitures collected by or through the use of a circuit or magistrate court, clerk, or other court officer for violations of a county, township, municipal or chartered governmental unit's ordinance, charter, or bylaw, shall be paid into the state general fund as provided by chapter 4-3 and sixty-five percent to the appropriate government subdivision treasurer. (SDCL 16-2-34)

The board of county commissioners in every county in this state may provide the circuit judge of the judicial circuit of which such county forms a part with suitable and sufficient courtroom facilities and equip the same to conduct the business of the court at a place other than the county seat of such county but within said county where such judge resides. (SDCL 16-6-7) The judge of the circuit court shall have power, upon request of the board of county commissioners or upon his own motion, by an order to that effect, to appoint and hold special terms, at the county seat of any county within his circuit, and such special terms shall be regarded the same as the regular terms prescribed by this chapter; provided that the order for any such special term shall be filed in the office of the clerk of courts at least ten days before the opening of such term. (SDCL 16-5-18)

Each county in the state shall provide suitable and adequate facilities for the magistrate court, including the facilities necessary to make the space provided functional for its intended use. (SDCL 16-12A-29)

For the purposes of this chapter, the board of jury selectors shall be the clerk of the circuit court, the chairman of the board of county commissioners, and the county auditor, or if there be no person holding any one or more of such offices in the county, the presiding circuit judge shall designate a person to fill the vacancy. If a jury district is utilized, the board of jury selectors from each county need not be present during the preparation of the district master jury list. The presiding judge shall compile that list from each county's master jury list. (SDCL 16-13-2.1)

Each juror for each day's attendance upon the circuit court or the magistrate court shall receive fifty dollars, and mileage at such rate as may be established pursuant to § 3-9-1 for each mile actually and

necessarily traveled, to be paid by the county. However, any juror called but not impaneled shall receive an appearance fee of ten dollars and, in addition, mileage at such rate as may be established pursuant to § 3-9-1 for each mile actually and necessarily traveled. Such juror's fees, except as provided in § 16-13-47, shall be paid by the county treasurer upon the presentation of warrants. The warrants shall be issued by the county auditor forthwith upon filing of each juror's certificate of attendance. Each certificate shall bear the endorsement or certificate of the clerk of the court in which such fees accrued to the effect that the certificate is accurate as to the time expended and the amount of fees claimed. (SDCL 16-13-46) Jurors' expenses and fees for cases involving violations of municipal charter, ordinance, or bylaw shall be paid by the city treasurer at the close of the trial upon warrants issued by the city auditor. (SDCL 16-13-47)

Any action brought under the federal civil rights statutes may be commenced only within three years after the alleged constitutional deprivation has occurred. This section is prospective in application. (SDCL 15-2-15.2) If a person entitled to bring an action other than for the recovery of real property, except for a penalty or forfeiture, or against a sheriff or other officer for an escape, was at the time the cause of action accrued, either:(1) Within the age of minority as defined in chapter 26-1; or(2) Mentally ill; the time of the person's disability is not a part of the time limited for the commencement of the action. The period within which the action shall be brought cannot be extended more than five years by any disability except infancy, nor can it be extended in any case longer than one year after the disability ceases. The provisions of this section do not apply to actions for the foreclosure of any real estate mortgage, either by action or by advertisement. (SDCL 15-2-22)

Each witness shall receive, for each day's attendance before any court, board, or tribunal in any civil or criminal case twenty dollars and mileage at such rate as may be established pursuant to § 3-9-1. Such mileage is limited to each mile actually and necessarily traveled. In any criminal case involving violation of a state law, witness fees on the part of the state shall be paid by the proper county, and the fees of any material witness on the part of the defendant shall be paid by the county unless otherwise ordered by the court. In any case involving violation of an ordinance, the local unit of government passing the ordinance shall pay the witness fees unless otherwise ordered by the court. However, no person may receive witness fees if serving a period of incarceration in a state, county, or municipal facility at the time that person appears as a witness. (SDCL 19-5-1)

4.219 Assessors

The county director of equalization shall be appointed by the board of county commissioners at either a special or regular meeting of the commissioners. If a single municipality contains fifty percent or more of the population of a county, the mayor of the municipality and the board of county commissioners shall make the appointment, and the mayor is entitled to sit and vote with the board. (SDCL 10-3-3) No state or county official or any other person charged with the duty of assessing or appraising real property for purposes of taxation may continue in office unless he holds an appropriate certificate issued by the Department of Revenue and Regulation, upon successful completion of a written examination or has been accepted for enrollment in a certification program to be conducted by the department and approved by the South Dakota Association of Assessing Officers, to be completed within one year. Certification is not required of clerical staff not engaged in field assessing or appraising. (SDCL 10-3-1.1) Chapter 10-3 contains the statues relating to county and local assessors.

4.220 Deputy Assessor

The county commissioners may appoint deputies to the county director of equalization. Such deputies shall hold office at the pleasure of the county commissioners and are subject to the

recommendations of the director of equalization and have the same powers and duties as the director of equalization. (SDCL 10-3-11) Deputies to the director of equalization shall qualify in the same manner as a director of equalization, and the compensation of such deputies shall be fixed by the board of county commissioners and paid out of the general fund upon warrants of the county auditor after allowance by such board. No claim of a deputy may be allowed unless it has attached thereto the affidavit of the director of equalization stating the amount due such deputy. (SDCL10-3-13)

4.221 County Manager – Optional form of Government

The electors of any county may adopt a board of county commissioners-appointed manager form of county government provided for by this chapter. (SDCL 7-8-1) In each county adopting an optional form of county government, the board of county commissioners shall be the governing body of the county and shall exercise all powers authorized by law and the State Constitution applicable to counties except as otherwise provided by this chapter. The board shall be elected in the same manner as provided by chapter 7-8. (SDCL 7-8A-2) The county manager shall be the administrative head of the county and is responsible for the proper administration of the affairs of county government. The county manager shall be appointed solely on the basis of his training, experience, and administrative qualifications and need not be a resident of the county. He shall serve at the pleasure of the board at a salary set by the board. (SDCL 7-8A-3) The board of county commissioners may appoint as county manager any county officer or employee deemed to be qualified by reason of his training, experience, and administrative qualifications. If any county officer or employee is appointed county manager, the officer or employee shall resign his office or position and terminate his responsibilities before assuming the office of county manager. (SDCL 7-8A-4)

The county manager shall:(1) Provide for the proper execution of all orders, resolutions, and regulations established by the board;(2) Attend all meetings of the board and recommend measures for adoption;(3) Prepare and submit to the county board a proposed annual budget and long-range capital expenditure program, along with a financial plan for raising revenue, for such a period as the board may direct;(4) Administer the provisions of the budget when adopted by the board;(5) Keep the board fully advised of the financial condition and needs of the county and make such other reports from time to time as required by the board or he deems necessary;(6) Appoint and hire qualified staff to assist in the proper administration of the county affairs; and(7) Perform such other duties as may be required of him by the board. (7-8A-5)

The board of county commissioners, by ordinance, or upon receiving a petition signed by not less than fifteen percent of the registered voters in the county, based upon the total number of registered voters at the last preceding general election, shall submit to the electors the question of whether to adopt an optional form of county government authorized by this chapter. The procedures set forth in chapter 7-18A shall govern such initiated measure and election. (SDCL 7-8A-6) A petition to discontinue an optional form of county government authorized by this chapter may be submitted to the board for submission to the electors of the county at an election, in the manner provided for the petition of an optional form of county government under the provisions of § 7-8A-6. (SDCL 7-8A-7) The adoption or the discontinuance of an optional form of county government, as provided in this chapter, does not affect any act or contract affirmed or ratified. (SDCL 7-8A-8)

4.222 Combining Offices

The board of county commissioners may, by ordinance, combine two or more county offices and that one person shall be elected to, and perform the duties of, the combined offices. (SDCL 7-7-1.2) Notwithstanding the provisions of § 7-7-1.1, the board of county commissioners may by ordinance

combine with one or more other counties a county office. That person shall be elected to and perform the duties of the combined offices. (SDCL 7-7-1.8) If a majority of those voting shall approve the question at the special election pursuant to § 7-7-1.5 or if the offices are combined pursuant to § 7-7-1.2, an officer shall be nominated and elected at the next general election to the combined office in the same manner provided by law for the election of other county officers. Such officer shall hold office for a term of four years commencing on the first Monday of January following his election. The salary of the elective officer shall be the higher of either office combined. (SDCL 7-7-1.3)

The board of county commissioners shall upon receiving a petition signed by not less than fifteen percent of the registered voters, based upon the total number of registered voters at the last preceding general election, submit to the voters of the county the question whether two or more county offices shall be combined and that one person shall be elected to, and perform the duties of, the combined offices. The board of county commissioners shall follow the procedure set forth in chapter 7-18A in submitting such question to the electors. (SDCL 7-7-1.5) Notwithstanding the provisions of § 7-7-1.1, the board of county commissioners shall upon receiving a petition signed by not less than fifteen percent of the registered voters, based upon the total number of registered voters at the last preceding general election, submit to the voters of the county the question of whether to combine with one or more other counties a county office. That person shall be elected to and perform the duties of the combined offices. The board of county commissioners shall follow the procedure set forth in chapter 7-18A in submitting such question to the electors. (SDCL 7-7-1.6) An officer shall be nominated and elected at the next general election to the combined office provided for in § 7-7-1.8. If the election submitted pursuant to § 7-7-1.5 is held at a primary election, each candidate for the vacant officer shall run as an independent candidate as provided in chapter 12-7, except that the petition filing deadline shall be the first Tuesday in August. The officer shall be voted upon by the voters of the counties that have resolved to combine the office. Such officer shall hold office for a term of four years commencing on the first Monday of January following the officer's election. (SDCL 7-7-1.9) The board has the right to increase the salary for auditors, treasurers, register of deeds, sheriffs and states' attorneys above the rate as stated in 7-7-9.1, 7-7-12 and 7-12-15.

Chapter 5
Agriculture

5.001 County Agricultural Extension Services

The board of county commissioners of any county of this state is hereby authorized to establish and conduct cooperative extension work in agriculture, general and home economics, and boys and girls club work in cooperation with the extension service of South Dakota State University upon such terms and conditions as may be agreed upon by the board of county commissioners and the state director of extension and the United States Department of Agriculture in their respective counties. (SDCL 13-54-10) The board of county commissioners of any county may from time to time appropriate and pay out for the general improvement of agricultural conditions in its county, in cooperation with the Agricultural Extension Department of South Dakota State University, such sums as it may deem proper. (SDCL 13-54-4)

Immediately after the boards of county commissioners have voted to establish cooperative extension work under the provisions of this chapter, they shall appoint a county extension board of five to seven members. At least two members shall be farmers and one a member of the board of county commissioners who may also be one of the farmer representatives. No person shall be denied membership on the grounds of sex, race, color, creed, or national origin. The membership shall be representative of the racial population mix in the county and of the various interest groups served by extension. The members of this board shall be appointed for a period of one year and their terms shall expire on the tenth of January each year. This board shall, at its first meeting after January tenth each year, organize and elect from their membership a president, vice president, and secretary-treasurer. (SDCL 13-54-11) The members of the county extension board shall receive payment comparable to members of other county boards and commissions other than the members of the board of county commissioners as shall be established by the board of county commissioners but in no case less than five dollars for each day or part of a day actually engaged in the service of the board and shall be paid expenses incurred in necessary service inside or outside of the county at the same rate paid county extension personnel. Any amount paid a county commissioner who is a member of this board shall not be included in the limits of compensation provided for in § 7-7-5. (SDCL 13-54-12) The county extension board is hereby authorized to expend the moneys appropriated by the board of county commissioners for cooperative extension work in cooperation with the state director of extension as may be necessary to effectively carry on county extension work with funds that are made available. Such expenditures shall be made on vouchers approved by the president of the county extension board, or a designated member of said board, on warrants issued by the county auditor in the same manner as regular county warrants. (SDCL 13-54-13)

5.002 Cooperation with Soil Conservation Districts

Procedures for establishing the soil conservation districts are outlined in SDCL 38-8-1.

The supervisors of a conservation district may invite the governing body of any political subdivision of this state located near or within the territory comprising the district to designate a representative to advise and consult with the board on all questions of program and policy which may affect the property, water supply, or otherwise be of interest to such subdivisions. (SDCL 38-8-51)

A local conservation district may be discontinued by a referendum (SDCL 38-8-90 to 38-8-96). Upon receipt from the State Conservation Commission of a certification that the commission has determined

that the continued operation of the district is not administratively practicable and feasible, pursuant to the provisions of this chapter, the supervisors shall terminate the affairs of the district. The supervisors shall dispose of all property belonging to the district at public auction and after all debts and obligations have been satisfied shall pay over the proceeds of such sale to the state conservation commission grant fund. (SDCL 38-8-97; AGR 1959-60, p.58)

5.003 Holding of County Fairs

It shall be lawful for the county commissioners in their discretion to purchase, including by contract for deed or lease with purchase option, or lease or acquire by gift, bequest, or otherwise, land in such county and to erect or lease and maintain, repair, remodel, and otherwise improve at any time suitable buildings thereon for county fair purposes and to conduct a county fair thereon, employing a secretary or manager therefore, and to do any and all things in the premises which are ordinarily done by the manager conducting county agricultural and industrial fairs, or to delegate any and all such powers for the conduct of such fair to a county fair board or nonprofit operating corporation as provided by §§ 7-27-10 and 7-27-11, including the right to charge for entrance thereto and to offer premiums for exhibits thereat. In the discretion of the county commissioners county fair purposes may include buildings, equipment, and other facilities for 4-H achievements days or any other 4-H activity, and any funds provided by this chapter may be allocated and used for such expenditures. (SDCL 7-27-3) In lieu of appointing a secretary or manager, or a county fair board, the county commissioners may enter into a lease or working agreement with a nonprofit operating corporation which shall conduct and have full management and control of the county fair and which is hereby empowered to exercise all rights and privileges and granted all immunities with regard to such conduct, management and control as are granted boards of county commissioners by this chapter and code, except to the extent expressly limited by any such lease or working agreement. One member of the board of county commissioners shall be appointed by it to serve as ex officio member of the board of directors of the nonprofit operating corporation. (SDCL 7-27-11)

If land or buildings leased by a county or by the county fair board or nonprofit operating corporation for fair grounds is owned by any other public corporation or subdivision, a lease thereof may be made for any period not to exceed ninety-nine years and all public corporations or subdivisions are hereby authorized to make such lease contracts, and to include purchase options therein, or to sell under contract for deed or otherwise or to make a gift of such property to any of the foregoing entities as in the discretion of the governing bodies might best serve the public interest. (SDCL 7-27-6)

The county commissioners may erect, maintain, repair, remodel, and otherwise improve upon any ground owned or acquired by purchase, including by contract for deed or lease with purchase option, lease, gift, bequest, or otherwise, any building to be used for the exhibition of stock, farm produce, school work, and domestic arts, or for the sale of livestock, or for farmers' or other meetings or any other purpose which in the discretion of the county commissioners is to the benefit of the best interests of the county. The board may purchase, including by contract for deed or lease with purchase option, lease, or otherwise acquire by gift, bequest, or otherwise, any other real property in the county with or without buildings thereon, or lease space in any building within the county, for any of the above specified purposes. The county commissioners may levy a tax for any of the purposes not to exceed thirty cents per thousand dollars of taxable valuation of taxable property in the county. The levy authorized by this section is in addition to the levy authorized in § 10-12-21. (SDCL 7-27-1) If the land upon which any fair established pursuant to the provisions of this chapter is annexed by a municipality, the board of county commissioners shall continue to regulate maintenance, construction, and supervision of the fairgrounds. (SDCL 7-27-1.1)

There are specifically exempted from the provisions of this chapter and from the computation of the amount of tax imposed by it, the gross receipts from the following:

(1) Sales of tickets or admissions to the grounds and grandstand attractions of state, county, district, regional, and local fairs;

(2) Admissions to nonprofit historic sites and repertory theater performances operated by nonprofit organizations;

(3) Admissions to community operated celebrations and shows sponsored by a chamber of commerce or other similar nonprofit organization if the county or municipality in which the activity takes place officially sponsors the activity and no charge is made to the operators of the celebration or show for the use of county, city or town facilities or services;

(4) Admissions to events or receipts from activities sponsored and operated by colleges or vocational schools or elementary or high schools or related clubs or supporting organizations approved or supervised by a school or college when the entire net proceeds are spent for educational purposes and any associations of them and receipts from tangible personal property or any product transferred electronically sold at such events. However, receipts from tangible personal property or any product transferred electronically sold at such events or activities are included in the measure of sales tax at the time of purchase by the college or school or related club or supporting organization;

(5) Religious, benevolent, fraternal, youth association or charitable activities, including any bingo or lottery conducted pursuant to § 22-25-25, where the entire amount of such receipts after deducting all costs directly related to the conduct of such activities is expended for religious, benevolent, fraternal, youth association or charitable purposes, and, except for any bingo or lottery, the receipts are not the result of engaging in business for more than three consecutive days. However, receipts from tangible personal property, any product transferred electronically, or services purchased for use in the activity are included in the measure of sales tax;

(6) Sales of tangible personal property or any product transferred electronically when the net receipts there from are used primarily for the restoration or maintenance of the Governor's mansion and capitol grounds;

(7) Any charge or entry fee made to persons for engaging in participatory events limited to tournaments, contests and league activities. However, receipts from tangible personal property, any product transferred electronically, or services purchased for use in tournaments, contests and league activities shall be included in the measure of the tax imposed by this chapter;

(8) Admissions to events or receipts from activities sponsored and operated by county or municipal historical societies or centennial committees when the entire net proceeds are spent for centennial celebration purposes. However, receipts from tangible personal property, any product transferred electronically, or services purchased for use in the activity are included in the measure of sales tax;

(9) Religious, benevolent, fraternal, youth association or charitable activities conducted at county fairs, if the entire amount of such receipts after deducting all costs directly related to the conduct of such activities is expended for religious, benevolent, fraternal, youth association or charitable purposes, and the receipts are not the result of engaging in business for more than five consecutive days. However, receipts from tangible personal property, any product transferred electronically, or services purchased for use in the activity are included in the measure of sales tax;

(10) Admissions to circus performances sponsored or operated by religious, benevolent, fraternal or youth associations, if the entire amount of the receipts after deducting all costs directly related to the conduct of the circus performances is expended for religious, benevolent, fraternal, youth associations or charitable purposes;

(11) Admissions to events or receipts from activities sponsored and operated by religious, benevolent, or charitable organizations for a period not to exceed thirty days in any calendar year, if the

entire amount of the receipts after deducting all costs directly related to the conduct of the event or activity is expended for the benefit of homeless persons. (SDCL 10-45-13)

The county commissioners, county fair board or nonprofit operating corporation may lease the fair grounds and fair buildings or any part thereof to any person, persons, limited liability company, corporation, association, or organization in their discretion, either for the purpose of having such person, persons, limited liability company, corporation, association, or organization take charge of and operate all or any part of the county fair or for organization meetings, entertainment, livestock shows, horse, or any other types of races and for any and all other purposes in their discretion which serve and benefit the public. (SDCL 7-27-12) No fair shall be held by a fair corporation receiving aid from any county under the provisions of this chapter during the week of the state fair. (SDCL 7-27-12.1)

5.004 Private Operation of County Fair

Associations or nonprofit operating corporations may be formed to serve on behalf of any county or two or more counties jointly for the purpose of holding and conducting annual fairs or exhibitions to promote and encourage agriculture, horticulture, stock-raising, and general domestic industries and for the purpose of disseminating information with respect to agriculture, horticulture, stock-raising, and general domestic industries or any one of them. Any nonprofit operating corporation having a lease or working agreement with any county as provided by § 7-27-11 may contract with additional counties, so long as all such counties are adjacent to each other and form a compact area, for purposes of conducting a joint fair. The secretary of such association or nonprofit operating corporation shall file a copy of its articles of association or incorporation, as the case may be, with the county auditors of the counties joined in such enterprise and shall annually file a list of officers for that year and a report of all receipts and expenditures not later than December thirty-first of each year with the said county auditors of each such county. One member of the board of county commissioners of each joining county shall be appointed to serve ex officio on the board of directors of the association or corporation, as the case may be. (SDCL 7-27-16) It shall be lawful for the boards of county commissioners of the counties embraced within the territory covered by the articles of the fair association or corporation operating under the provisions of this chapter, to appropriate for the aid of such association or nonprofit operating corporation and for such association or corporation to receive, for the purpose of paying premiums or otherwise assisting in the promotion of such fairs or exhibitions, such aid as in the discretion of the county commissioners is just and necessary. (SDCL 7-27-17)

5.005 Sending of Exhibits to State Fair

The board of county commissioners in each county may appoint some suitable person to collect and send to the annual state or any county fair or other like agricultural exhibition, agricultural, horticultural, mineral, and livestock exhibits, and may expend each year for such purposes a sum not exceeding six hundred dollars. All prizes awarded for such county exhibit shall be paid into the county general fund and become the property of the county. (SDCL 7-27-19)

5.006 Forest Protection and Extension

The Department of Agriculture may at its discretion employ a state forester who shall be qualified for and authorized to carry out all the activities necessary for the management, protection, harvest, and sale of timber for all interested state agencies. (SDCL 41-20-1) The state forester, with the sanction of the Department of Agriculture, may, upon request, assist and cooperate with any agency of the United States government, all state, county, and municipal agencies, and with any corporation, association, partnership, or individual owning or controlling any forestland, woodland, shelterbelt, or rangeland in

the management and protection of such forestland, woodland, shelterbelt, or rangeland, including: (1) Preparation of plans for management, protection, replacement;(2) Management, surveying, harvesting, marketing, and processing of forest products;(3) Creation and administration of fire protection districts;(4) Disposal of slash, debris from logging operations, and other fire and insect hazards;(5) Assistance to the state wild land fire coordinator in the prevention and suppression of fires;(6) Prevention and suppression of other nuisances. In providing timber sale assistance pursuant to subdivisions (1) and (2) of this section, on private lands, the state forester shall determine that such assistance is not reasonably available through a consulting forester. If the assistance is determined to be unavailable from a consulting forester, the state forester may provide the assistance after courtesy notification to private industrial foresters. However, the assistance provided shall be limited to thirty man days over a period of six years per individual owner. After providing assistance in the suppression of fires pursuant to subdivision (5) of this section, the state wild land fire coordinator may collect fire suppression and extinguishment costs pursuant to § 41-20-5 if the costs were initially incurred by the coordinator or if the secretary of agriculture has repaid any of the governmental agencies or persons described by this section for goods or services used in fire suppression efforts directed by the coordinator. (SDCL 41-20-8) The state wild land fire coordinator, under the direction of the Department of Agriculture, shall take authorized action to prevent, suppress, and extinguish forest fires on all state and privately owned lands and on other lands while acting pursuant to a cooperative fire suppression agreement. The coordinator shall direct and aid the efforts of all fire suppression forces involved in the fires. The coordinator may bring an action in circuit court against the responsible person to obtain reimbursement for reasonable fire suppression and extinguishment costs. (SDCL 41-20-4)

5.007 Control of Animal Disease

Boards of county commissioners and governing bodies of municipalities may appropriate and expend money for the control or eradication of any infectious, contagious, and communicable diseases among livestock within their respective boundaries. Such funds shall be used in cooperation with the State Animal Industry Board and the United States Department of Agriculture. (SDCL 40-5-19)

5.008 Scabies and Brucellosis Control

The inspection, examination, and testing or retesting of livestock for the control and eradication of brucellosis shall be made in any county or other area of this state established and certified to be a certified brucellosis free area at such intervals and in such manner as the Animal Industry Board may determine necessary to protect the work already done and to preserve for such county and this state, its county or area status under the specifications of the recommended uniform methods and rules. (SDCL 40-7-12)

5.009 Animal Damage Control

There is created a special fund in the Office of the State Treasurer to be known as the state animal damage control fund. (SDCL 40-36-10) The following bounties may be paid from the state animal damage control fund to any resident of this state who possesses a resident small game license or a resident predator/varmint license and who kills, within the boundaries of this state, including parks and monuments, the following animals:(1) For each adult coyote, five dollars;(2) For each coyote pup, five dollars. The Game, Fish and Parks Commission may not approve any bounty claim except during the months of April, May, and June. No bounty payments may be made under this section unless the commission determines that the average price of raw furs in the round for the preceding winter is below

five dollars per animal. Any person who exhibits to a county auditor the skin of an animal which was killed outside of the boundaries of that county, or who patches any skin or part of skin, for the purpose of defrauding the State of South Dakota, in any manner, is guilty of a Class 2 misdemeanor. (SDCL 40-36-15 AGR 1961-62, p. 40) The bounty claim, consisting of the affidavit, shall then be presented to the Game, Fish and Parks Commission for final approval or disapproval and such commission shall carefully examine such claim and all facts relevant thereto to determine whether there is any fraud or irregularity connected with the same, and shall make such investigation in regard to the same as it may, in its discretion, deem proper. (SDCL 40-36-23) In the event of approval of a bounty claim by the Game, Fish and Parks Commission, such claim shall be presented to the state auditor, who shall issue his warrant therefore upon the state predatory animal control fund and mail the same to the claimant. (SDCL 40-36-24)

Each county shall annually appropriate a sum equal to an assessment on all cattle and sheep based on the most current United States Department of Commerce census of agriculture, and the money shall be remitted to the state treasurer for deposit in the state animal damage control fund. Each county shall be assessed at a rate of twenty-five cents per head for all sheep and six cents per head for all cattle. The Department of Game, Fish and Parks shall certify, to each county auditor, the amount to be appropriated. The state animal damage control fund shall be matched two dollars for every one dollar of county appropriation by funds of the Department of Game, Fish and Parks to carry out the provisions of this chapter. (SDCL 40-36-11) The county auditors shall, on or before the fifteenth of June and November, present one-half of the appropriation, made pursuant to § 40-36-11, to the state remittance center, to be placed in the state animal damage control fund. (SDCL 40-36-13)

When the board of county commissioners of any county east of the Missouri River is petitioned by two-thirds of the sheep owners whose names appear on the tax rolls of such county, to levy a special tax levy, not to exceed ten cents per head on all sheep within the county, for the purpose of raising a fund to be expended for the control of predatory animals as defined in this section, said board is hereby empowered to make such levy and collect the tax in the manner provided for the collection of other property tax. For the purpose of this section, predatory animals shall mean coyotes and foxes. (SDCL 40-36-34) Such moneys as are collected by the provisions of § 40-36-34 shall be expended to pay bounties or to employ hunters, which may be, in cooperation with the organized control program of the United States Department of the Interior Fish and Wildlife Service, at the discretion of the board of county commissioners. (SDCL 40-36-35) The board of county commissioners shall establish the rate of bounties and provide all rules and regulations necessary for the carrying out of §§ 40-36-34 and 40-36-35. (SDCL 40-36-36)

Except as provided by § 40-36-16, it is a Class 2 misdemeanor for any person to hunt, take, or kill predatory animals without possessing a resident small game license or a resident predator/varmint license, or to falsify any bounty claim, or to claim a bounty on any skin for which a bounty has been paid or refused. (SDCL 40-36-27; AGR 1961-62, pp. 40-41)

The resident owners of at least fifty-one percent of the sheep, or the resident owners of at least fifty-one percent of the cattle, or the resident owners of at least fifty-one percent of both sheep and cattle acting jointly, in any county, as shown by the last county livestock census as provided for in § 40-37-1.1, may petition the secretary of the Department of Agriculture to designate the county as a predator control district. (SDCL 40-37-1)

The first meeting of the livestock owners in the district shall be called in the following manner: The director of equalization of each county within the district shall, within thirty days of the formation of the district, prepare from the county livestock census, as corrected by the board of county commissioners, of that year, an accurate list of all persons, corporations, or partnerships who have been determined to be the owners of livestock described in the petition in his county and the number of livestock. The

director of equalization shall mail a notice to each of the resident livestock owners to attend the district meeting, at a time and place to be specified in the notice, for the election of the board of directors of the predator control district. He shall likewise publish a copy of the notice in the official newspaper of the county, ten days prior to the date of the meeting. He shall set the date of the meeting so as not to conflict with the date of similar meetings in adjoining districts. When assembled in accordance with the above notice, the resident owners shall appoint a chairman and secretary, who shall act as judges of election. (SDCL 40-37-5)

At least thirty days prior to the annual levy of general taxes by the board of county commissioners wherein such district is located, the board of directors of each predator control district shall determine pursuant to the provisions of this chapter the amount of special levy for district operations during the following years and certify such levy to the board of county commissioners. (SDCL 40-37-10) The board of county commissioners shall, at time of the annual levy of general taxes, levy an additional special tax in an amount specified by the board of directors pursuant to § 40-37-10 not to exceed twenty-five cents per head of all sheep six months old or older as of January first of the current year that are being held for breeding purposes and six cents per head of all cattle one year old or older not in feedlots. (SDCL 40-37-11) In addition to the levy authorized pursuant to § 40-37-11, the board of county commissioners may levy an additional amount equal to the amount provided in § 40-37-11, if such additional amount is approved by referendum as provided in § 40-37-13. (SDCL 40-37-12)

5.010 Weed and Pest Control

Terms used in this chapter mean:

(1) "Agricultural chemical," any material used to control or eradicate weeds or pests;

(2) "Board," any county weed and pest board;

(3) "Board member area," a geographical area within a county from which a member of the board is appointed;

(4) "Commission," the South Dakota Weed and Pest Control Commission;

(5) "Control," the prevention or limiting of the growth, spread, or development of weeds or pests;

(6) "Department," the State Department of Agriculture;

(7) "Pest," any rodent, bird, other than a game bird or a state or federally protected bird, insect, or nematode which the commission has found to be detrimental to the production of crop or livestock or to the welfare of persons residing within the state. Prairie dogs are included in the definition of a pest if all of the following conditions apply:

(a) Sylvatic plague has been reported in any prairie dog colony east of the Rocky Mountains;

(b) The South Dakota Department of Game, Fish and Parks has determined that the population of prairie dogs within the state, including tribal lands, exceeds the one hundred forty-five thousand acre level;

(c) Prairie dogs are colonizing on lands where the prairie dogs are unwanted by the owner of the impacted land;

(d) Lands adjacent to the impacted owner's land do not have a maintained one-mile buffer zone, or other mutually agreed border, in which prairie dog control is applied; and

(i) The owner of the impacted land has filed a written complaint of encroachment requesting mitigation or abatement with the South Dakota Department of Agriculture and served a copy upon the owner of adjoining lands from which the prairie dogs are encroaching; or

(ii) The owner of the impacted land has filed a written complaint of the encroachment with the

(8) "Pesticide," a substance or mixture of substances for preventing, destroying, repelling, or mitigating any pest or any substance or mixture of substances intended for use as a plant regulatory, defoliant, or desiccant or any substance or mixture of substances intended to be used as a spray adjuvant;
(9) "Secretary," the state secretary of the Department of Agriculture;
(10) "Supervisor," any person appointed or employed by a board for the purpose of carrying out the provisions of this chapter;
(11) "Weed," any plant which the commission has found to be detrimental to the production of crops or livestock or to the welfare of persons residing within the state. (SDCL 38-22-1.2)

The responsibility for and the cost of controlling and eradicating weeds and pests on all lands or highways owned or supervised by a state agency or subdivision shall be upon the state agency or subdivision supervising such lands or highways, and paid out of funds appropriated to its use. (SDCL 38-22-22) Weed control is a proper governmental function and no liability rests on the county for damages incurred in its performance (AGR 1945-46, p. 157).

The board of county commissioners of each county shall hold a public meeting to appoint or provide for the election of a county weed and pest board no later than February 1, 1984. Prior to the meeting the board of county commissioners shall establish the number of members of the board and shall establish board member areas. Each board member area shall be compact and contiguous. Notice of the meeting shall be advertised by publication in the official newspapers of the county, at least ten days before the meeting, and in any other manner as the board of county commissioners may provide. (SDCL 38-22-23.1) The board of county commissioners shall appoint or provide for the election of a county weed and pest board which shall consist of five or seven members. However, one member shall be a county commissioner appointed by the board of county commissioners. Each member shall serve for a term of three years or until his successor is appointed and qualified. The board of county commissioners may stagger the initial appointments so that the terms of all of the board members do not expire at the same time. Any qualified elector, residing in the board member area he is appointed to represent, is eligible to be a member. (SDCL 38-22-23.2)

In any county containing a first or second class municipality with a population of five thousand or more, at least one county weed and pest board member shall be appointed or elected from within the limits of the municipality. (SDCL 38-22-23.5)

After the initial county weed and pest board has been appointed or elected, the board of county commissioners shall appoint or provide for the election of members to fill expired terms or vacancies. Each board member shall assume office at the first regular meeting of the board following appointment or election. (SDCL 38-22-23.4) The board of county commissioners shall establish rates of compensation and expense and mileage allowances for the county weed and pest board members. (SDCL 38-22-23.8)

The county weed and pest board may:(1) Employ administrative personnel and determine duties and conditions of employment;(2) Coordinate activities with state and federal agencies and enter into cooperative agreements, including agreements entered into pursuant to chapter 1-24;(3) Control and disburse money received from any source, including state and federal agencies;(4) Secure and maintain bonds or liability insurance. (SDCL 38-22-23.9)

The county weed and pest board shall:(1) Implement and pursue an effective program for the control of weeds and pests;(2) Hold regular meetings;(3) Keep minutes of all meetings and a record of all official acts;(4) Submit a yearly report to the Department of Agriculture covering the activities of the board and submit reports to the board of county commissioners as the board may require;(5) Employ supervisors and, if necessary, deputies;(6) Make at least one annual inspection to determine the progress of weed and pest control within a county and make written reports covering

the inspections available for public use; and(7) Obtain competitive bids for any purchase in accordance with the requirements established by law for other county purchases. (SDCL 38-22-23.10)

The board of county commissioners may, based upon the budget submitted by the county weed and pest board, appropriate and expend money from the general fund of the county for the purpose of this chapter. (SDCL 38-22-24) No appropriations may be made pursuant to § 38-22-24 until the county has been organized for weed and pest control pursuant to this chapter. (SDCL 38-22-26)

CHAPTER 38-20A PESTICIDES – SDCL statements for further requirements must be followed in these cases.

Grass, weeds, trees or brush referred to in §§ 31-31-1 and 31-31-2 shall be cut, removed, or destroyed between the first day of September and the first day of October of each year, or between dates annually fixed by the board of supervisors. (SDCL 31-31-3) If the owner or occupant of land abutting upon or adjoining township roads does not cut, remove, or destroy, or cause to be cut, removed, or destroyed, the grass, weeds, trees, or brush in the right-of-way of such roads between the first day of September and the first day of October, or between the dates annually fixed by the board, the board of supervisors of the township in which the land is located may employ a person or persons to immediately cut and remove the grass, weeds, trees, and brush on or in the right-of-way of such township roads with compensation at a rate to be fixed and paid by the board. (SDCL 31-31-5)

5.011 Construction of Pipelines

Any person desiring to construct or lay a water pipeline over, across, or under public highways, except state trunk system highways, for the purpose of providing rural water service in the State of South Dakota shall make application to the board of county commissioners as is provided in this chapter. However, the application need not indicate the point or points to which the water pipeline is to be constructed nor the route thereof. Upon application, the board of county commissioners may grant countywide authorization for the construction of rural water service lines subject to the provisions of this chapter. (SDCL 31-26-25)

5.012 Establishment of irrigation Districts

Twenty-five percent of the electors as defined in § 46A-4-2 owning or holding lands in any proposed district for irrigation may propose organization of an irrigation district by filing a petition with the Board of Water and Natural Resources in compliance with the requirements of this chapter. The minimum number of electors required to propose an irrigation district shall be three. However, if the number of electors in a proposed irrigation district is less than seven, all electors within the proposed district must join in the petition. (SDCL 46A-4-1) A petition to organize an irrigation district shall be presented to the Board of Water and Natural Resources and signed by twenty-five percent of the electors of the proposed irrigation district. The petition shall include the legal description of all the lands proposed for inclusion in the district and shall request that the proposed district be organized under the provisions of this chapter. (SDCL 46A-4-3)

The Board of Water and Natural Resources shall then give notice of an election for the purpose of determining if the proposed district shall be organized under the provisions of this chapter. The election shall be conducted as provided in §§ 6-16-4 to 6-16-6, inclusive. (SDCL 46A-4-15) No person shall be entitled to vote at any election held under the provisions of this chapter unless he shall be a qualified elector as provided in § 46A-4-2. (SDCL 46A-4-17) Where lands which are within a proposed or existing irrigation district are owned by a corporation, by the United States, or by this state, such corporation,

and any department or agency of the United States or of this state, in order to participate in any district election, by an instrument in writing, executed and acknowledged by the proper officer or officers of such corporation, department, or agency, shall designate an agent to vote in its behalf. Such instrument shall be presented to and filed with the county auditor by such agent. (SDCL 46A-4-18) If a majority of all the votes cast are "Irrigation District-Yes," the board shall, by resolution, declare the territory duly organized as an irrigation district, under the name and style designated. Upon filing of a true copy of the resolution with the secretary of state, the irrigation district shall become a political subdivision of the state with the authority, powers, and duties prescribed in chapter's 46A-4 to 46A-7, inclusive. (SDCL 46A-4-19)

5.013 County Drainage Commission

The board of county commissioners may appoint a commission of three or more members, the total membership of which shall always be an uneven number and at least one member of which shall be a member of the county board, to be known as the county drainage commission. SDCL 46A-11-38 to 46A-11-38 clarify the duties and procedures which the county board and drainage commission must follow.

5.014 County Planning and Zoning

The board of county commissioners of each county in the state may appoint a commission of five or more members to be known as the county planning commission. If a county proposes to enact or implement any purpose set forth in this chapter then the board of county commissioners shall appoint a county planning commission. The total membership of the county planning commission shall always be an uneven number and at least one member shall be a member of the board of county commissioners. The county planning commission is also the county zoning commission. (SDCL 11-2-2) The planning commission shall meet at such times as may be necessary to accomplish the purposes of this chapter, but, in no event, shall the commission meet less than once every three months. (SDCL 11-2-3.1)

The boards of two or more county commissioners may direct their planning commissions to plan jointly. Expenses incurred in connection with joint planning, including but not limited to contracted services, shall be shared equitably among the counties involved. Encouraging regional economic development, including but not limited to the creation of compatible controls in neighboring counties, shall be the objective of joint planning. (SDCL 11-2-5)

The governing body of any municipality may contract with the board for planning and zoning services to be provided by the county, and the contract may provide that the municipality shall pay such fees as are agreed for the services performed. Under the provisions of the contract the municipal governing body may authorize the county planning and zoning commission, on behalf of the municipality, to exercise any of the powers otherwise granted to municipal planning and zoning commissions under chapters 11-4 and 11-6.(SDCL 11-2-7) The contract between the governing body of the municipality and the board may provide among other things for joint county-municipal planning activities, or it may designate the county planning commission as the planning commission for the municipality. (SDCL 11-2-8)

If a county is conducting or in good faith intends to conduct studies within a reasonable time, or has held or is holding a hearing for the purpose of considering a comprehensive plan, the board in order to protect the public health, safety, and general welfare may adopt as emergency measures a temporary zoning ordinance and map and a temporary subdivision ordinance, the purposes of which are to classify and regulate uses and related matters as constitutes the emergency. Before adoption or renewal of the

emergency measure or measures, the board shall hold at least one public hearing . Notice of the time and place of the hearing shall be given once at least ten days in advance by publication in a legal newspaper of the county. Any emergency measure is limited to one year from the date it becomes effective and may be renewed for one year. In no case may such a measure be in effect for more than two years. (SDCL 11-2-10)

The county planning commission may prepare, or cause to be prepared, a comprehensive plan for the county including those municipalities within the county which are either unincorporated or which have requested by resolution of the governing board of such municipality to be included. (SDCL 11-2-11) In the case of a conflict between a township planning and zoning ordinance and the county comprehensive plan, the county comprehensive plan controls. (AGR No. 72-29)

For the purpose of promoting health, safety, or the general welfare of the county the board may adopt a zoning ordinance to regulate and restrict the height, number of stories, and size of buildings and other structures, the percentage of lot that may be occupied, the size of the yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, flood plain, or other purposes. (SDCL 11-2-13)

For any of the purposes specified in § 11-2-13, the board may divide the county into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of this chapter; and within the districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land . All such regulations shall be uniform for each class or kind of buildings throughout each district, but the regulations in one district may differ from those in other districts. The regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration or scattering of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks; and other public requirements. The regulations shall be made with reasonable consideration, among other things, to the character of the district, and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the county. (SDCL 11-2-14)

A zoning ordinance does not determine who may or may not use the land, but only determines how the land should be used. Zoning ordinances to prevent the use of land by such organizations as communal corporations are not permitted by the rural zoning law. (AGR 1949-50, pp. 84-85)

Each organized township in the state has power, when a municipality with a population of fifty thousand or more is within four miles of the township:(1) To regulate the depositing of garbage, ashes, offal, or any offensive matter which might endanger the health of its inhabitants;(2) To compel any privy, sewer or cesspool maintained in such a manner as not to be offensive or endanger the health of any persons in the township;(3) To prevent the pollution of or any injury to any water supply; (4) To do what may be necessary or expedient for the promotion of health or the suppression of disease;(5) To regulate the moving of any house or building into, within, or out of the township, and to prevent the moving into the township of any house or building of dangerous construction or condition, and to require that a license or permit shall first be obtained from the board of township supervisors before any house or building may be moved into, within, or out of the township. The granting of such license or permit shall be within the sound discretion of the board of township supervisors and no house or building shall be moved into, within, or out of the township until such permit or license has first been issued;(6) To prescribe the manner of constructing buildings and structures to be erected within the township, and to require that a building permit shall be first obtained from the board of township supervisors before the construction of any building or structure within the township;(7) To prevent and provide for remedying any dangerous construction or condition of any building, enclosure or

manufactory or any equipment used therein, and to require all buildings and places to be put in a safe condition;(8) To regulate and restrict the height, and size of buildings and other structures and the location and use of buildings, structures and land for trade, industry, residence or other purposes, with the object of promoting the health, safety, morals and the general welfare of the township, and for such purpose to divide the township into districts for zoning purposes;(9) To abate any nuisance found within its corporate limits;(10) To compel compliance with and to prevent the violation of any of the provisions of this section. The powers as provided in this section shall be subordinate to any zoning or other powers of the county or adjoining municipality when such powers are, or shall be, exercised by said county or municipality in respect to said township. (SDCL 8-2-9)

After receiving the recommendation of the planning commission the board shall hold at least one public hearing on the respective comprehensive plan, zoning ordinance, or subdivision ordinance. Notice of the time and place of the hearings shall be given once at least ten days in advance by publication in a legal newspaper of the county. (SDCL 11-2-19)

Based on the results of the hearing or hearings, the action upon the comprehensive plan shall be by resolution carried by the affirmative votes of not less than a majority of all the members of the board. Based on the results of the hearing or hearings, the action upon the zoning regulations and the subdivision regulations shall be by ordinance carried by the affirmative votes of not less than a majority of all the members of the board. (SDCL 11-2-20) The comprehensive plan, zoning ordinance, and subdivision ordinance may be referred to a vote of the qualified voters of the county pursuant to §§ 7-18A-15 to 7-18A-24, inclusive. The effective date of the comprehensive plan, zoning ordinance, or subdivision ordinance on which a referendum is to be held shall be suspended by the filing of a referendum petition until the referendum process is completed. However, if a comprehensive plan, zoning ordinance, or subdivision ordinance is referred to a referendum vote, no land uses that are inconsistent with the plan or ordinance may be established between the time of adoption of the resolution or ordinance by the board, as provided in § 11-2-20, and the time of the referendum vote. (SDCL 11-2-22)

If the voters reject the proposed comprehensive plan, zoning ordinance, or subdivision ordinance, the board may cause the planning commission to revise the plan or regulations and adopt the same as revised, and file and publish the same as required by § 11-2-21. (SDCL 11-2-22.1)

If a board has adopted the comprehensive plan or any part thereof, no street, road, park, or other public way, ground, place, space, public building or structure, public utility, whether publicly or privately owned, if covered by the comprehensive plan or any adopted part thereof, may be constructed or authorized in the county or within its subdivision jurisdiction, until the location and extent thereof has been submitted to and approved by the planning commission. In case of disapproval, the commission shall communicate its reasons to the board. By majority vote of the board members elect, a board may overrule the disapproval. (SDCL 11-2-24)

The plan, ordinances, restrictions, and boundaries adopted pursuant to this chapter may be amended, supplemented, changed, modified, or repealed by action of the board. Any such modification or repeal shall be proposed in a resolution or ordinance, as appropriate, presented to the board for adoption in the same manner and upon the same notice as required for the adoption of the original resolution or ordinance. The amendment, supplement, change, modification, or repeal may be requested through a petition by twenty percent of the landowners in the zoning district or districts requesting change. For purposes of this section, the term, landowner, means any person who owns land in the county as evidenced by records in the offices of the register of deeds and clerk of courts. If land is sold under a contract for deed that is of record in the office of the register of deeds in the county, both the landowner and the individual purchaser of the land, as named in the contract, are treated as landowners. Any charitable, benevolent, or religious society that owns any agricultural land in the

county is not a landowner for purposes of this section if the agricultural land is exempt from taxation pursuant to § 10-4-10, but any such society is a landowner for purposes of this section for any of its real property in the county that is not exempt from taxation pursuant to § 10-4-10. (SDCL 11-2-28) An individual landowner may petition the board to change the zoning of all or any part of the landowner's property. The petitioning landowner shall notify all other abutting landowners by registered or certified mail of the petitioned zoning change at least seven days before the public hearing is held on the matter by the planning commission. Property is considered as abutting even though it may be separated from the property of the petitioner by a public road or highway. If the affected property abuts, adjoins, or is within one mile of a county border, the county auditor on behalf of the individual landowner shall also notify, by registered or certified mail, the county auditor in the adjoining county of the petitioned zoning change at least seven days before the public hearing is held on the matter by the planning commission. (SDCL 11-2-28.1) Following receipt of any petition as provided in § 11-2-28 or 11-2- 28.1, the board shall hold a public hearing, subject to the requirements of § 11-2-19, and take action upon the petitioned request. Within forty-five days of receipt by the board of any such petition, the county planning commission shall consider the requested action and make a recommendation thereon to the board. (SDCL 11-2-28.2) After the hearing, the board shall by resolution or ordinance, as appropriate, either adopt or reject the amendment, supplement, change, modification, or repeal. If adopted, the board shall publish a notice of the fact of adoption once in a legal newspaper of such county and take effect on the twentieth day after its publication. The provisions of § 11-2-22 are applicable to this section. (SDCL 11-2-30)

The board shall provide for the enforcement of the provisions of this chapter and of ordinances, resolutions, and regulations made there under, and may impose enforcement duties on any officer, department, agency, or employee of the county. (SDCL 11-2-25)

The Bureau of Intergovernmental Relations, under the direction and control of the Governor and in consultation with the State Planning Commission, shall assist, upon request of the governing body of any unit of local government, in developing comprehensive planning for such units of local government and shall coordinate such efforts with the state comprehensive development plan. Such local planning assistance shall include, but not be limited to, surveys, land use studies, urban renewal, and technical services relating to planning. Any expenses incurred by the Bureau of Intergovernmental Relations in providing such planning assistance shall be reimbursed by the unit of local government requesting and receiving such assistance. (SDCL 11-1-11) The Bureau of Intergovernmental Relations may receive and expend funds from municipal, county, regional, and other units of government and may accept and disburse grants and other aids for any appropriate planning purpose from the federal government and from other public or private sources, and may enter into contracts with agencies of the federal government, local government units, and private persons or others as may be necessary in the planning assistance functions of the bureau. (SDCL 11-1-13)

5.015 Rural Fire Protection

The boards of county commissioners of the counties of this state may, in their discretion, cooperate with the governing bodies of organized townships or municipal corporations within their respective counties, with organized townships or municipal corporations in adjacent counties, the secretary of agriculture or his designee, nonprofit fire protection corporations or associations, and with the boards of county commissioners, organized townships or municipal corporations within adjacent states when reciprocal agreements between the contracting parties have been provided in the purchase and operation of any fire-fighting equipment or fire protection to safeguard the range, farm and forest lands within their respective counties and in prevention of fire nuisances thereon. (SDCL 34-31-1) The boards

of county commissioners of the counties of this state may participate in cooperation with the organized townships and municipal corporations within their respective counties, organized townships and municipal corporations in adjacent counties, or the fire-fighting agencies thereof, and with organized townships, boards of county commissioners or municipal corporations in adjacent states when reciprocal agreements between contracting parties have been provided and with the secretary of agriculture or his designee in the organization and training of rural fire-fighting groups, and in the payment of the operation and maintenance of fire-fighting equipment and in the cost of suppressing fires. (SDCL 34-31-2) For the purpose of carrying out the provisions of §§ 34-31-1 and 34-31-2, the board of county commissioners may levy a tax not to exceed sixty cents per thousand dollars of taxable valuation in the county outside the limits of any municipality which provides fire protection service. However, the governing body of any municipality may by ordinance petition the board of county commissioners to include the taxable valuation within the limits of the municipality under the aforementioned levy for county fire protection service. The inclusion of the taxable valuation within the limits of the municipality under the levy for county fire protection service shall be in addition to the municipal levy for fire protection as provided in chapter 9-33. The proceeds of such tax shall be used only for the purposes of §§ 34-31-1 and 34-31-2 in the county in which the tax is levied and unexpended balances at the end of the fiscal year may not revert to the general fund but shall be permitted to accumulate and shall be available for carrying out the purposes of §§ 34-31-1 and 34-31-2. The levy authorized by this section is in addition to the levy authorized in § 10-12-21. (SDCL 34-31-3)

In counties containing areas not embraced in any civil township, fireguards as described in §§ 34-35-1 and 34-35-2 may be constructed under the supervision of the board of county commissioners and the cost thereof met by special levy upon the real property, including railroads, within the area embraced by such fireguards. (SDCL 34-35-6) Any civil township, or county not divided into civil townships, may use one-half of the general road fund to help defray the expense of making fireguards; and the expense of making any fireguard running upon or adjacent to the township line shall be borne equally by the two townships between which such fireguard is made. (SDCL 34-35-7) To prevent the growth of grass and weeds upon the fireguards, if the township supervisors or board of county commissioners deem it necessary, they shall cause the same to be dragged with a harrow between the first day of July and the first day of September. Not later than the first day of October, or whenever there is any danger from prairie fires, it shall be their duty to cause the grass along the roadway between the fireguards, when there is plowing along both sides of such roadway, to be burned; and a reasonable price shall be paid out of the fireguard fund for such breaking and burning. (SDCL 34-35-5)

Each organized township in the state is a body corporate and has power:(1) To sue and be sued; (2) To acquire, by purchase, condemnation, or other lawful means, real property within or without the limits of the township, necessary or convenient for township purposes, or for the exercise of the powers granted to the township;(3) To make such contracts and purchase and hold such personal property as may be necessary for the exercise of its corporate or administrative powers or for the protection of the property of its inhabitants, including the purchase of or contracting for fire-fighting equipment or protection;(4) To pass bylaws or ordinances for the government of such township and for the protection of the lives and property of its inhabitants, and to enforce the same in its corporate name before any magistrate;(5) To make such orders for the disposition, regulation, or use of its corporate property as may be deemed by the board of supervisors conducive to the best interests of the inhabitants. (SDCL 8-2-1)

Every municipality shall have power when and to the extent deemed expedient by its governing body, to enter into contracts for the furnishing of fire-fighting equipment and protection for the municipality, with any other political subdivision or subdivisions or with any nonprofit fire protection corporation or association legally organized, provided that any contracts so entered shall extend for a

term of not to exceed ten years. The term "nonprofit fire protection corporation or association" as used herein shall include any corporation or association legally organized for the primary purpose of providing fire-fighting equipment and protection for a particular political subdivision or subdivisions, and operated on a nonprofit basis. Such contracts may be entered into with political subdivisions of adjoining states when reciprocal agreements between the contracting parties have been provided. (SDCL 34-31-4) Procedures for establishing and maintaining a rural fire protection district are found in SDCL 34-31A.

If an application for organization as provided in § 6-16-2 covering any rural territory is completed and requests to form, organize, establish, equip, and maintain a rural fire protection district, the application shall be filed with the county auditor of each county in which the territory is located. The board of county commissioners in each county where the rural fire protection district would be located may by resolution initiate the formation of the district. (SDCL 34-31A-2) Upon the filing of the petition in the office of the county auditor, the county auditor shall determine and certify that the petition has been signed by the number of voters as specified in § 6-16-2. If the petition contains sufficient names, the county auditor shall designate a time and place for the petition or resolution of the county commissioners to be heard by the board of county commissioners. (SDCL 34-31A-5) There is created in the state treasury the fire equipment fund. All revenues collected from counties and volunteer fire departments pursuant to § 34-31-6 shall be deposited in the fund for the administration of the provisions of § 34-31-6. (SDCL 34-31-7) At the time and place so fixed, the board or boards of county commissioners shall meet, and all persons residing in or owning taxable property within the proposed district shall have an opportunity to be heard respecting the formation of such district or the location of the boundaries thereof. Thereupon the board or boards of county commissioners shall determine whether the proposed district is suited to the general fire protection policy of the county, or each of such counties, as a whole, determine the boundaries of the proposed district, whether as suggested in the petition or otherwise, and make a written order of such determination which shall describe the boundaries of the district and be filed in the office of the county auditor or auditors of each county in which such district is situated. (SDCL 34-31A-8) The rate of tax for functions authorized by this chapter may not exceed sixty cents per thousand dollars of taxable valuation in the rural fire district for the purchase of rural fire-fighting equipment in rural fire districts or for the purpose of assisting and contributing to the purchase and upkeep of fire-fighting equipment in adjoining first or second class municipalities or villages. (SDCL 34-31A-22) There are additional procedures prescribed in chapter 34-31A when the district encompasses property located in more than one county.

5.016 Water Districts

Watershed Districts:

In order to carry out conservation of the natural resources of the state through land utilization, flood control, and other needs, upon sound scientific principles, for the protection of the public health and welfare and the provident use of the natural resources, the creation of a public corporation as an agency of the state for the aforesaid purposes is herein provided. This chapter shall be construed and administered so as to make effective the following state policy:

(1) The general welfare of the people of South Dakota requires that the land and water resources of the state be conserved and put to optimum beneficial use.

(2) Worthwhile land and water resource developments by the people and organizations in the state are to be encouraged in every way possible by state government and state government shall control, coordinate, and regulate the interrelationship of, and interdependence of, land and water resource

projects in order to assure and maintain maximum benefits to the people of the state.
(3) To this end, construction of land and water resource projects in the state shall receive the review, approval, and assistance of the administering agency of state government to the extent that proposed project works are complementary with other existing and proposed developments.
(4) To this end, also, land and water resource development project proposals shall include adequate attention to continuous maintenance in order to assure that the works constructed shall continue to provide the service for which they were built and sponsors of such projects and responsible administrators of state government shall perform their duties in such a manner as to assure the benefits that accrue to the people directly affected by land and water developments are maintained and do not become a menace to or produce damage to the property of others. (SDCL 46A-14-1)

Upon receipt of the initiating petition, the board of conservation district supervisors shall determine if the petition contains sufficient signatures as required by § 6-16-2. (SDCL 46A-14-10)

The managers, having completed the apportionment of benefits, shall prepare and by resolution approve the tax or assessment levy against landowner's land and buildings outside of the corporate limits of municipalities and shall file a detailed report of same with the appropriate county auditor. The county auditor shall spread the district levy upon the county tax rolls and collect such district levy in the same manner as other county taxes. (SDCL 46A-14-58) Whenever a railroad's right-of-way, street, or railroad properties owned or operated for railway purposes shall be included within any assessment for local improvement, such railroad right-of-way, street, or railroad properties owned or operated for railway purposes shall be assessed only if, and to the extent that, it is determined by the Department of Revenue that it will benefit from the proposed improvements. In determining whether or not such railroad right-of-way, street, or railroad properties operated for railway purposes benefits, its existing use as a railroad right-of-way, street, or railroad properties operated for railway purposes shall be presumed to be permanent. (SDCL 6-5A-1)

On or before the first day of August in each year, the managers shall certify to the county auditor of the county in which the land is located, all taxes and assessments against the landowners' lands and buildings in the district. Extension of the same upon the tax and assessment lists shall be made as specified in § 46A-14-58 and the same shall be collected in the same manner as other county taxes and assessments, these funds to be deposited with the secretary-treasurer of the watershed district, who shall place them in the depository designated by the managers and shall be disbursed according to § 46A-14-75. (SDCL 46A-14-70) The managers may enter into a contract with the supervisors of a conservation district or districts for funds necessary for operation, maintenance, and other obligations set forth in the watershed financial plan approved pursuant to § 46A-14-51, and funds for such purpose shall be made available to the conservation district by the county commissioners pursuant to § 38-8-49.1. (SDCL 46A-14-53)

The board of county commissioners may contribute to watershed districts supplies, labor, and equipment to benefit the county highway system, for maintenance of flood control, water management, and erosion control measures. The contributions to the districts shall be paid for from the general fund. (SDCL 46A-14-71)

If a bond issue or other authorized long-term financing arrangement is authorized by the voters of the district, the managers shall immediately cause a written notice to be mailed to the owner or owners of each tract of land assessed of the amount of said assessment, which notice shall state that if said amount is not paid in full within thirty days after the date of the notice, bonds will be issued or payment contracts negotiated and that an assessment will be levied annually against the tract of ground for a period of not to exceed fifty years in an amount sufficient to pay said total assessment plus the interest due on said bonds. No suit to set aside said assessment shall be brought after the expiration of thirty days from the date of said notice. The amount levied against each tract of land to pay for the

bonds, or contract commitments, falling due each year and the interest thereon shall be levied, certified to the proper county auditor and collected the same as other taxes. (SDCL 46A-14-64)

Water Development Districts:

Water development districts are established by the Legislature under the general supervisory jurisdiction of the South Dakota conservancy district. A water development district may be established by an Act of the Legislature, signed by the Governor, describing the exact boundaries of the area to be included within the proposed water development district and assigning it to an appropriate name. It may also be established pursuant to the procedure set forth in SDCL 46A-3A-8 to 46A-3A-15, inclusive. A water development district is considered a political subdivision of the state and shall exist as a legal entity beginning on January first immediately following the effective date of an Act establishing it as a water development district.

Water development districts are established for the purpose of promoting the conservation, development and proper management of district water resources according to district priorities through technical, organizations and financial assistance to prospective and existing sposors and through recommending projects for inclusion in the state water plan, and through other appropriate actions. Immediately after completion of a budget and adoption of special assessments and a tax levy by a water development district board of directors, but not later than the first of October, the secretary of the water development district shall send one certified copy of the levy as adopted and one certified copy of such budget to appropriate tax collecting officials of the affected counties and to the state secretary of revenue. (SDCL 46A-3E-12)

Chapter 6
Administration of Education & Libraries

6.001 Education and County Administration

In certain instances, the county commissioners and other county officials retain the same duties regarding the administration of the school districts within their respective counties. The sections that follow summarize the more important of these duties.

6.002 Duties of the County Commissioners Regarding School Administration

It shall be the duty of the board of county commissioners to preserve and maintain a complete record of all proceedings at the county level relating to the establishment, division, consolidation, or any change of boundaries of school districts, and promptly transmit to the secretary of the Department of Education a correct plat showing any changes in the boundaries of any school district in accordance with the instructions of the secretary of the Department of Education. (SDCL 13-6-3.2)

Whenever the secretary of the Department of Education shall find or be notified by school or county officials that there are insufficient qualified voters residing within a school district who are willing to serve as members of its school board, the secretary of the Department of Education shall notify the board of county commissioners of the county in which the school district is situated in accordance with § 13-5-14, and the board of county commissioners shall serve as the school board of the district until such time as this situation no longer exists. The board of county commissioners shall be authorized to levy sufficient funds against the taxable property of the district, with regard for the levy limitations applicable to school districts, to finance the necessary educational program and student services either through the operation of an accredited educational program within the district or for the payment of the necessary tuition if pupils must be assigned to another district or districts for educational purposes. (SDCL 13-6-9.2)

The board of county commissioners shall, upon receipt of an order pursuant to § 13-6-48.1, correct the legal description of the school district, or school districts, as the same may appear in its records, and immediately thereafter shall notify the secretary of the Department of Education that the county records have been corrected in accordance with the order of the secretary of the Department of Education. (SDCL 13-6-48.2)

Any power or duty which a board of county commissioners or county officer has under this chapter involving reorganization of its own school districts shall be performed jointly by all boards of county commissioners and county officers of those counties containing territory involved in the reorganization of joint school districts. (SDCL 13-6-53) When a joint school district is created, the county officials shall comply with the orders and directives of the board of county commissioners of the county having jurisdiction over the school district so created. A school district shall be considered under the jurisdiction of the board of county commissioners of the county where the major portion of the children listed on the school census of the school district area are located. (SDCL 13-6-59)

The board of county commissioners of the county having jurisdiction over the school district shall have the power and duty to determine the value and the amount of all school owned property, cash assets, and all bonded and other indebtedness of each existing school district affected by a change in district boundaries resulting from any form of school district reorganization. The board of county

commissioners of the county having jurisdiction over the school district entity created or to which territory has been annexed shall, after the change takes effect, order any equitable adjustment as deemed necessary. If the adjustment requires a transfer of school district owned property, assets, or liabilities from a school district under the jurisdiction of one county to a school district under the jurisdiction of another county, the order directing the transfer of such property and the adjustment of such assets and liabilities shall be approved by the board of county commissioners of both counties and signed by their respective chairmen. (SDCL 13-6-77) All liabilities and assets shall be transferred according to directives prepared by the board of county commissioners. A copy of such directives shall be mailed to the secretary of the Department of Education and all other parties enumerated in § 13-6-48. (SDCL 13-6-78)

If the board of county commissioners shall find that a school district, totally dissolved by reorganization, has an excess of total liabilities over its total assets, such board of county commissioners may authorize a tax levy against the property located within the boundary of such former school district necessary to discharge the balance of liabilities. Such tax levy may not exceed six dollars per thousand dollars of taxable valuation in any one year and shall be exclusive of all other tax limitations. The board of county commissioners may at its discretion authorize the issuing of bonds to fund the indebtedness herein mentioned. (SDCL 13-6-81)

When a school district entity goes out of existence due to reorganization or consolidation and the area of such district becomes a part of another school district entity, the records of the former school district entity shall become official records of the school district entity of which said former school district entity becomes a part; provided, however, that if said former school district entity becomes a part of two or more school district entities, then the board of county commissioners shall determine the disposition of said records. The destruction or disposition of such records shall be handled as prescribed in §§ 13-8-43 and 13-8-44. The provisions of this section shall also be applicable to school district entities which have gone out of existence prior to the effective date hereof and said records shall be disposed of as herein provided. (SDCL13-6-83)

Upon receipt of the resolution approving a boundary change or the petition for a boundary change from the school board of each school district affected, the board of county commissioners having jurisdiction over the district to which the territory is to be annexed shall at its next regular meeting issue its order setting forth the effective date of such boundary change. Copies of the order shall be mailed or delivered to the secretary of the Department of Education, the county auditor and each of the county commissioners of the county, or counties, involved, and the chairmen of the school boards of the respective school districts. (SDCL 13-6-87)

Notwithstanding other provision of law, when applying the levies for school purposes, the county director of equalization of each county shall adjust the level of assessment in that district so that the level of assessment as indicated by the most recent assessment to sales ratio as provided for in § 10-11-55 and the most recent agricultural income value as provided for in § 10-6-33.28 to 10-6-33.33, inclusive, in that district are equal to eighty-five percent of market value or agricultural income value. The Department of Revenue and Regulation shall provide the director of equalization of each county all of the factors of adjustment necessary for the computations required in this section. (SDCL 10-12-31.1)

6.003 Duties of Other County officials Regarding School Administration

It shall be the duty of the county auditor to keep a record of all apportionments of state and county school funds and such other statistical records as shall be required in making reports to the secretary of the Department of Education. (SDCL 13-3-24)

If under the provisions of this chapter a new school district entity is created, the voters shall elect a new school board to govern such school district as hereinafter provided. The county auditor of the county having jurisdiction shall conduct the election under the existing statutory provisions for conducting annual elections in school districts. The county auditor shall perform the duties specified for the business manager as provided in chapter 13-7, as amended and shall also give the notice of the number of school board vacancies and residency requirements for school board membership as may be set forth in the plan approved by the voters. The declaration of candidacy shall be filed in the office of the county auditor, and the date of election may be fixed on or before the first Monday in May. Costs of conducting the election shall be paid by the new school district. (SDCL 13-6-62)

In all school districts oaths of office shall be filed with the business manager except the oath of office of the business manager which shall be filed with the county auditor. Business managers and presidents of school boards are empowered to administer oaths in all matters in which their respective districts may be a party. (SDCL 13-8-15)

There shall be a school board consisting of five, seven, or nine members whose terms shall be from one to three years initially, and three years thereafter; provided that each school board member shall be entitled to complete the term of office to which he was elected. (SDCL 13-8-20) In case of the breach of any condition of any official bond in any school district, the county auditor or any member of a school board where the default occurs shall cause an action to be commenced and prosecuted thereon in the name of the school district and all money so collected shall be paid into the county treasury, to be applied to the use of the schools of such district. If the auditor either fails or refuses to bring such action upon the breach of a bond, any taxpayer of the district may cause such action to be commenced and the necessary expenses of such action shall be paid, unless otherwise ordered by the court, out of the county treasury from funds apportioned to such district. (SDCL 13-8-21)

The school district shall report the amount budgeted to the county auditor before October first on forms prescribed by the county auditor. The county auditor shall spread a levy in dollars and cents over the taxable property of the school district sufficient to raise the money requested by the school district subject to the legal dollars and cents limitations on any of the funds as provided by law. For the general fund, special education fund, capital outlay fund, and pension fund, the school district may report the levy in dollars or dollars per one thousand dollars of taxable valuation. (SDCL 13-11-3)

The county auditor shall transfer, by the twentieth day of the month, all money received during the prior month on behalf of each school district to each district. Any county failing to distribute the receipts within the time prescribed is subject to an interest charge of one percent per month based on the receipts for the first thirty days of delinquency or part thereof and thereafter, one percent per month for each month or part thereof. When any funds which have been collected by the county for the district from taxes or from any other source are remitted to the district, the county auditor shall send to the school district business manager a statement showing the exact source and amount of the funds. The statement shall be made in a form and contain information prescribed by the secretary of the Department of Education. (SDCL 13-11-7)

The county auditor shall have the power and the duty to levy a tax from year to year against the property of the district in accordance with such resolution to meet said bond redemption fund payments when due without further notice or demand from such school district, provided, however, that if a surplus in the bond redemption fund exceeds the principal and interest requirements for one year in addition to such requirements for the current year, the school board may by resolution, determine the amount of such surplus and certify said amount to the county auditor on or before September first and the county auditor shall thereupon be authorized to reduce the required levy for the bond redemption fund to be spread upon the tax list for collection in the following year by the amount so certified. (SDCL 13-16-11)

6.004 County General School Fund

The county general school fund to be apportioned pursuant to § 13-13-5 shall consist of the net proceeds of all fines for violation of state laws and any tax so designated in Title 10. (SDCL 13-13-4) The county treasurer shall on or before the fifth day of January and July furnish the county auditor with a statement of all money in the county treasury belonging to the county general school fund and shall pay the money, upon the order of the auditor to the public school districts having land area within the county in proportion to the average daily membership of children residing in the school districts as certified by the Division of Education Services and Resources. (SDCL 13-13-5) The county treasurer shall also pay at such times as are required by law to the business manager of each school district all of the money collected for such school district and shall take duplicate receipts for the money paid. He shall send one of the receipts to the business manager of such school district. (SDCL 13-13-6)

6.005 Transfer of School district and County Property

Any school district and the State of South Dakota, any municipality, organized township, or county within or partly within the boundaries of the school district may transfer, exchange, or convey land and properties belonging to them and under their jurisdiction upon terms and conditions determined and agreed upon by the respective governing bodies. (SDCL 13-24-4)

6.006 County And School Libraries

Laws concerned with counties providing public library services are found in Chapter 14-2.

Any governing body may provide public library services by either:

(1) Establishing a public library;

(2) Contracting with an established public library for extension of its services and loan of its materials to the citizens of the contracting local governmental unit; or

(3) Joining with one or more governing bodies under the provisions of chapter 1-24 to establish a joint public library.

Chapter 7
County Property

Management of County Real Estate

7.001 Scope of county Land Management Legislation

The administration and management of county real estate in South Dakota are governed by several state statutes which appear to conflict. Most of the confusion developed with te passage of the County Land Administration and Management Law by the 1939 session of the state legislature. (SDCL 7-31)

Opinions of the Attorney General have dealt largely with the interpretation of individual features of each statute affecting county real estate instead of establishing general rules that could be followed in most instances. In 1941 he did give a rather general interpretation when he stated that the County Land Administration and Management Act of 1939 is a general act relating to county land administration and management, and was passed as an emergency act during the same session of the legislature that adopted the 1939 Code. While there was no specific repeal of any existing statures at the time of its passing, it would take precedence over any then existing provisions of law which were inconsistent with the provisions of the Act. (AGR 1941-42, pp. 368-371)

In 1943 the attorney general ruled that the general county property statutes (SDCL Chapter 7-29) were not wholly repealed by the legislative changes of 1939 and 1941 (i.e. the County Land Administration and Management Law and amendments to), but the latter do take precedence over the former statutes (SDCL Chapter 7-29) when in conflict. (AGR 1943-44, p. 68)

The board of county commissioners of any county shall have control of the sale, rental, and management of real property owned by the county acquired in satisfaction of school-fund loan mortgages or through foreclosure, or acquired through tax-deed proceedings or in payment of taxes, as provided in §§ 7-31-1 to 7-31-36, inclusive. (SDCL 7-31-2)

All instruments of conveyance of real property made by any county prior to January 1, 1992, which real property was acquired by such county through tax deed proceedings or in satisfaction of school fund mortgages or by compromise with insolvent banks or through foreclosure or settlement of "building fund" mortgages or by exchange or transfer of title of county-owned lands for other lands, or by any other means or from any other source, are, notwithstanding any omissions, irregularities, or defects in the proceedings had and taken by said county to sell and convey the same, hereby validated, legalized and cured to the extent that such conveyances shall operate to convey to the person named as grantee in such instrument of conveyance all of the right, title and interest of said county in and to such real property. If any person has any vested right in any real property by reason of any omission referred to in this section, and if no action or proceeding to enforce such right was commenced prior to July 1, 1993, such right shall be forever barred. No action or proceeding brought involving real property shall be of any force or effect, or maintainable in any court of this state, unless prior to July 1, 1993, there was recorded in the office of the register of deeds of the county in which the real property affected is situated, a notice of the pendency of such action, in accordance with chapter 15-10. (SDCL 7-29-21)

7.002 Classification of County Land

The county board may classify county owned land into Class One and Class Two land. Procedure for the sale, lease, transfer, and management may be varied between the two classes. The classification

must list the various tracts of land that are designated in each class. Each class must provide the general plan of leasing and management, including the general type of leases and the standards to be followed in leasing Class Two land.

The county land classification plan is made effective by resolution of the county board. A change in classification may be made in the same manner that the original classification was made, except that Class Two land may not be reclassified as Class One land before the termination of every five year period from the date of original classification or upon the termination of the lease on these tracts.

In order to carry out the purposes described in § 7-31- 1 the board of county commissioners may classify county-owned land into two classes which shall be called class one land and class two land. Such classification shall be based on the method of sale and leasing which will be followed in managing county-owned land. Procedure for sale, lease, transfer, and management may be varied between the two classes as provided herein. The classification shall list the various tracts of county-owned land that are designated class one land and the tracts that are designated as class two land and the general plan of leasing and management that is to be followed including the general type of leases and the standards and criteria that are to be followed in leasing class two land. The classification becomes effective by resolution of the board of county commissioners duly made and entered of record and thereafter the board may proceed in administration and management of the two classes of land as provided herein. The classification of any tract may be changed in the same manner that the original classification was made provided that tracts classified as class two land may not be reclassified as class one land, except at the termination of every five-year period from the date of original classification or at the termination of the lease on said tracts. Until such time as the board of county commissioners by resolution classifies the county-owned land all such land shall be considered class one land and shall be administered and managed as provided herein for class one land. Tracts acquired by the county after the above classification is made may be classified at any time by the board of county commissioners in the same manner, provided that until such classification is made, such tracts shall be considered as class one land. (SDCL 7-31-3)

7.003 Acquisition of Tax Deed Land

If any real property has been bid in by the county treasurer in the name of the county, at tax sale, and has not been redeemed from the sale, or the county has not assigned the certificate of sale, and sufficient time has elapsed since the sale that a tax deed may properly issue, the board of county commissioners may, in lieu of taking tax deed, procure from any person, firm, or corporation having any interest in the real property, real or apparent, a transfer by deed of the interest. However, the consideration for the transfer may not exceed the sum of fifteen dollars exclusive of taxes in connection with any one piece or parcel of land. (SDCL 10-25-21) If title to real property has been acquired by the county under the provisions of § 10-25-21, the board of county commissioners may compromise, abate, or fully cancel any taxes previously extended against the property. (SDCL 10-25-22)

If any real property has been bid in by the county treasurer in the name of the county at tax sale and has not been redeemed from the sale or the county has not assigned the certificate of purchase, and if sufficient time has elapsed since the tax sale that a tax deed may properly issue, if the county treasurer fails, refuses, or neglects to take proceedings for the issuance of a tax deed to the county, the county treasurer shall, upon written application of the county commissioners, or the governing body of any municipal corporation, school district, or township within the county that would be beneficiaries of the tax for which the property was sold, immediately give notice of intention to take tax deed as required by law. Upon such notice being given, if there is no redemption within the time allowed by law, the county treasurer shall issue a tax deed for the real property to the county as provided by law. If the county

treasurer fails, refuses, or neglects to comply with the provisions of this section, the county treasurer's duty to comply may be enforced by writ of mandamus. (SDCL 10-25-20)

The notice of intention to take a tax deed shall be served upon the owner of record of the real property so sold, upon the person in possession thereof, upon the person in whose name the property is taxed, upon the mortgagee named in any unsatisfied mortgage in force upon the real property of record in the office of the register of deeds of the county in which the property is located and if the mortgage has been assigned and the assignment thereof placed upon record in the office of the register of deeds, then upon the assignee in lieu of the mortgagee named in the mortgage. The notice of intention to take a tax deed shall also be served upon any lien holder, any creditor of record and other interested person as may appear from the records in the office of the register of deeds, the county treasurer or the clerk of courts. The county treasurer may obtain any title information necessary to identify persons who appear from the records to be interest in such real property as owners, mortgagees, lien holders or otherwise.

7.004 Special Assessments

As a general rule, a county is liable for special assessments for public improvements. Liability applies only to property which a county owns in its proprietary capacity and not to property acquired through tax deed proceedings (AGR 1945-46, p. 249-250; 1949-50, p. 154) With respect to municipal assessments against county property, it may be applied only to property which a county owns in its proprietary capacity and not to property acquired by the county through tax deeds proceedings (AGR 1949-50, p. 154). When such an assessment has been lawfully levied upon the state's real property, it is paid only pursuant to a specific appropriation for the purpose made by state legislature (AGR 1949-50, p. 357-358). Procedures for special assessments by the county are found in Chapter 9-43.

7.005 Sale of County Land Acquired by Tax Deed

The treasurer shall give notice of the sale of real property for taxes or assessments by publication thereof once during the week before the sale in the official newspapers of the county as designated by the board of county commissioners. If there is no newspaper published in the county, the treasurer shall give notice by written or printed notice posted at the door of the courthouse or building in which the circuit court is commonly held, or the usual place of meeting of the county commissioners, for two weeks previous to the sale. The county auditor shall reconcile the published list of unpaid taxes to the unpaid taxes in the tax list. (SDCL 10-23-2)

When any real property not exceeding twenty-five dollars in assessed value shall have been advertised in a newspaper for two successive years, and not sold, the treasurer shall give notice of the sale of such property by posting a written notice in the manner provided when there is no newspaper published in the county, and the same shall not be advertised in a newspaper. (SDCL 10-23-13)

In addition to the notice required by § 10-23-2, the county treasurer shall send the notice containing the information set forth in § 10-23-3 by first class mail to any owner of the real property at his last known address, and to any person holding a special assessment certificate which is a lien upon the real estate, and in case bonds have been issued in lieu of assessments certificates to the holder of the bond last maturing and also to the city auditor or town clerk of such municipal corporation. The county treasurer shall mail the notice at least fourteen days before the day of sale. The county treasurer shall certify, on the tax certificate record book for that tax year that notice was given in the manner prescribed by this section. (SDCL 10-23-2.1) If any of the following persons has annually, on or before November fifteenth, on a form prescribed by the Department of Revenue and Regulation:(1) Requested that a notice of sale of the real property be sent to him; and(2) Paid a three dollar fee to the county treasurer to cover the cost of sending the notice,

the county treasurer shall, in addition to the notice required by § 10-23-2, send the notice of sale containing the information set forth in § 10-23-3 to the person in possession of the real property, the person in whose name the property is taxed, the mortgagee named in any unsatisfied mortgage then in force upon the real property, and, if the mortgage has been assigned, to the assignee of the mortgage and to any other person who has or claims an interest in the real estate. The county treasurer shall send the notice of sale by certified mail to such person at the address as shown on the form. The notice shall contain the information set forth in § 10-23-3 and shall be mailed at least fourteen days before the date of sale. (SDCL 10-23-2.2) The board of county commissioners may by resolution require that the name, address, and amount of taxes, penalty, and interest due and the years the taxes are due of any delinquent taxpayer whose real property was sold or offered for sale at a tax sale pursuant to this chapter be published each year that a tax certificate is outstanding until such time as a tax deed is issued. (SDCL 10-23-2.3)

The county treasurer shall charge and collect, in addition to the taxes and interest and penalty, the sum of four dollars and fifty cents on each tract of real property and on each municipal lot or group of municipal lots advertised for sale or published pursuant to § 10-23-2.3, and each municipal lot or group of municipal lots, comprising a single description, if the municipal lot or group of municipal lots are sold for delinquent special assessments or published pursuant to § 10-23-2.3, which sum shall be paid into the county treasury. The county shall pay the cost of publication. (SDCL 10-23-5) Within thirty days after the completed publication required by § 10-23-2, each official newspaper in which any such notice is published, whether there be one, two, or three such newspapers, shall receive one-third of the total sum charged to the delinquent lands for advertising. (SDCL 10-23-6)

Before making a sale of lands and town lots on which taxes have not been paid, the treasurer shall offer each separate tract for sale in the numerical order in which it appears on the tax list and receive bids for it. If any person bids the full amount of the taxes, interest, and costs due on the land or town lots, stating in the bid the lowest rate of interest per year at which the bidder will pay the taxes assessed and due against the land and lots, the treasurer shall sell to that person the land or town lots and shall issue a certificate of sale to the purchaser. In no case may the rate of interest exceed the rate named in the bid and the bid offered on the land or lots at the lowest rate of interest per year shall be considered the best bid. No rate of interest higher than ten percent per year is a valid bid pursuant to this section. Upon redemption of a certificate that has been sold or assigned to a purchaser other than the county, a fee shall be deducted from the proceeds paid to the holder of the certificate. The county commission may, by resolution, establish a fee not to exceed fifty dollars. No property owner may be assessed this additional fee. The fee shall be deposited in the county general fund. Nothing less than the entire tract or lot may be sold. (SDCL 10-23-8)

Whenever a majority of the board of county commissioners deems it advisable, or whenever a written petition shall be presented to said board by the governing body of any municipal corporation, school board, board of education or township board, requesting the sale of any real property over which such petitioner has taxing power, the board of county commissioners shall direct that such real property be offered for sale in accordance with chapter 6-13. However, land classified as class two land shall not be offered for sale until after it has been reclassified as class one land by the board of county commissioners as provided in § 7-31-3. (SDCL 7-31-16) A county may participate as a bidder in the sale of tax deed lands the same as individuals if the property is needed for public purposes (AGR 1953-54, pp. 210-211). After a county has sold and issued to a purchaser at any time prior or subsequent to the effective date of this section a deed to any real property for which the county has taken tax title, the county auditor shall forthwith cancel the taxes levied against said real property prior to the sale by the county and enter such cancellation on the records of the county treasurer. Should the tax deed to the county and the county deed to the purchaser be by a court of competent jurisdiction decreed to be void

prior to three years after the execution of such tax deed to the county, such taxes shall be reinstated by the county auditor on the records of the county auditor and the records of the county treasurer, and shall again become a lien against said premises. (SDCL 10-25-40)

In the sale of tax deed lands acquired by the count through tax deed proceedings, the property may be offered for sale and sold by the county in the tracts, lots or parcels as the county board deems for the best interest of the county. The purpose is to obtain the maximum amount of revenue for the county regardless of how the property was originally described in the tax certificate of sale or how it was described in the original assessment. (AGR 1953-54, pp. 361-362)

7.006 Failure to Meet Contract Requirements of Tax Deed Land Sale

The deferred payments for lands sold and the interest thereon shall be paid promptly when due to the county treasurer. Whenever the purchaser of any tract shall fail to pay the principal or interest due by him to the county for such tract within three months after same shall become due, or shall violate any of the provisions of the contract of sale, such contract shall be null and void, and he shall forfeit the amount of purchase money and interest paid on the purchase of said land, and all right, title and interest in all improvements thereon and such payments and improvements shall be retained by the county for the same purposes for which the proceeds of sale from such lands are used, in full satisfaction and in liquidation of all damages for the use and possession of said property by the purchaser; and the county shall have the immediate right to reenter and take possession of said real estate. (SDCL 7-31-25)

To effect such forfeiture the board of county commissioners shall cause to be served upon the purchaser or his legal representative or assigns a notice specifying the conditions in which default has been made, stating that such contract will terminate thirty days after service of such notice or at the expiration of three months after the default, if that time has not already expired, unless prior thereto the purchaser shall comply with such conditions and pay the costs of service. (SDCL 7-31-26) Such notice shall be served personally in the manner provided for the service of a summons in civil actions. If the person to be served is not a resident of the state, cannot be found therein, or is deceased, any of which facts, recited in the return of the sheriff of the county where real estate lies, shall be prima facie evidence that he cannot be found in such county or state, then service shall be made by notice published once each week for at least two consecutive weeks in a newspaper of general circulation in the county where the real estate is situated, and such service shall be binding upon all parties in interest in said real estate, including all the personal representatives, heirs at law, devisees, legatees, next of kin, and creditors of any deceased person. Personal service of said notice without the state proved by the affidavit of the person making the same, made before an authorized officer having a seal, shall have the same effect as the published notice herein provided for. (SDCL 7-31-27) If within the time mentioned in the notice, the person served complies with such conditions and pays the costs of service, the contract shall be thereby reinstated to the same effect as though no default had occurred, but otherwise shall terminate as provided in § 7-31-25. (SDCL 7-31-29)

In lieu of or in addition to the forfeiture by notice as hereinbefore provided, in the discretion of the board of county commissioners such contract may be set aside by an action in the circuit court of the county in which said real estate is situated, under the proceedings provided for the strict foreclosure of real estate contracts, or under other proceedings provided by law, and the state's attorney shall conduct all said proceedings upon request of the board of county commissioners. (SDCL 7-31-30)

7.007 Assessment of Tax Deed Land After Sale

Tax deed property which has been resold is not assessable to tax purposes in the current year unless the sale is finally approved by the county board before the assessment date of the taxes. (AGR 1941-42, p. 165)

7.008 Responsibility to Clear Title After Resale of Tax Deed Property

If, after tax deed property has been sold by the county board, the new owner finds that someone else was in possession of a part of the property and refuses to surrender it, the county board cannot be held responsible for securing possession for the purchaser. (AGR 1945-46, p. 62-63)

7.009 Sale of Tax Deed Land to Federal Government

The various counties of this state are hereby empowered to take advantage of the act of Congress of March 20, 1922, (42 U.S. Stat., 465) and acts amendatory thereto, relating to the consolidation of national forests, and for that purpose the board of county commissioners of any county shall have authority to sell or otherwise dispose of lands acquired by such county through tax sale proceedings located within the boundaries of any forest or within five miles of the boundaries of any national forest which are chiefly valuable for national forest purposes, to the United States Government, at private sale at such price and upon such terms and conditions as the said board of county commissioners may deem advisable and to the best interests of the county. Before any such sale or transfer is effected, notice of such contemplated sale or transfer shall be given as required by the said acts of Congress and such notice shall be in lieu of any notice required by the laws of this state relating to the sale of such lands. (SDCL 7-29-16)

7.010 Lease of Certain County Real Estate

Class one land and all county land in those counties which have not by resolution of the board of county commissioners established a classification may be leased as follows: all grazing land classified as class one land belonging to any county of this state, acquired in satisfaction of a school-fund loan mortgage or through foreclosure of such, or acquired through tax-deed proceedings or in payment of taxes, may be offered for lease at public auction, provided that any land remaining unleased may be offered and leased privately under direction of board of county commissioners. (SDCL 7-31-4) Certain leasing provisions of the general county property statutes also apply. (Chapter 7-19)

Class two land shall be leased according to provisions prescribed by the board of county commissioners provided, however, no such lease shall be entered into unless the board of county commissioners in order to conserve and protect the existing forage resources of such county land and to restore the maximum carrying capacity of such land shall reserve the right to regulate and limit the amount of grazing thereon and to change the rentals annually in accordance with a variable scale of rental charges based on market prices for livestock or livestock products, the number and character of stock to be grazed, the carrying capacity of the land, or on any combination of these factors. (SDCL 7-31-5)

Leases on class two land may be terminated at the option of the board of county commissioners if the lessee fails to abide by the regulations as to use and protection of the land or to pay the annual rental in advance provided that leases on class two land may be terminated by reclassification of the land as class one land as provided in § 7-31-3, all of which provisions shall be made a part of the lease. (SDCL 7-31-6)

7.011 Right of Lessee to Construct Improvements

Whenever any land of a county has been leased, the board of county commissioners may grant to the lessee of such land a permit to erect thereon buildings, corrals, fences, well apparatus, wells, dams, and other water facilities; provided, that in no event shall the county become liable for any material furnished for, nor any labor performed in such improvements. The said lessee shall be the owner of such improvements subject to the provisions of §§ 7-31-8 to 7-31-11, inclusive. (SDCL 7-31-7)

When improvements have been constructed in accordance with a permit, as provided in § 7-31-7, and the owner of the improvements ceases to lease such lands, he may remove such improvements as are physically capable of removal within ninety days of the termination of his lease. If such improvements are not removed within the said ninety days, or sold within said period to a lessee or purchaser of the lands, they shall become the property of the county. (SDCL 7-31-8) A subsequent lessee or a purchaser of the land shall pay the prior lessee the reasonable value of improvements erected by him within permission of the board of county commissioners, that are not physically capable of removal, and such payment shall be made before a lease, contract of purchase, or deed is issued to such subsequent lessee or purchaser. The value of the improvements shall be determined as of the date of such lease, contract of purchase, or deed. (SDCL 7-31-9) In the event the parties concerned cannot agree upon such value, the board of county commissioners shall appoint a board of appraisal, to view the improvements and determine their value. The said board shall be composed of three disinterested persons who shall file with the board of county commissioners an itemized report of such appraisal, signed by at least two members of such board of appraisal. Members of the board of appraisal shall be paid at the rate of three dollars per diem and five cents per mile for the miles necessarily traveled in making such appraisal. The owner of the improvements shall deposit a sum with the county treasurer, prior to such appraisal sufficient to cover the cost of appraisal as determined by the board of county commissioners. The board of appraisal to be paid from such deposit and any excess shall be refunded to such owner of the improvements. (SDCL 7-31-10) The subsequent lessee, or purchaser shall become the owner of such improvements when he has deposited with the board of county commissioners, for the use of the former owner of the improvements, a sum equal to their value as determined by the board of appraisal. (SDCL 7-31-11)

7.012 Building of Dams on Leased Land

Any lessee of county real estate of the character described in § 7-30-1 shall upon application to the board of county commissioners be granted a permit to build a dam on the leased land for the collection and storage of surface water thereon, if the written approval of the federal district range program inspector of the site of the proposed dam and reservoir is attached to said application. (SDCL 7-30-15)

No quarter section, or adjoining quarter section which is partially covered by the reservoir at high-water mark shall be leased or sold to another than the lessee unless the new lessee shall first pay to the county auditor for the lessee a reasonable amount for the work, labor, and material used or furnished in the building of such dam or any additions thereto, less ten percent for each year following the building of the dam or the making of any additions thereto. Any payments received from the federal government under its range program, or under any other federal program or project for the building of such dam or any addition thereto, shall also be deducted. The amount which shall be paid for the lessee, as herein provided, shall be determined in the same manner in which the value of other improvements on leased county land are determined under the provisions of §§ 7-31-9 and 7-31-10. (SDCL 7-30-17)

7.013 Leasing of Oil Lands

To foster and encourage the development and exploitation of mineral, oil, gas, or other substances or commodities among the natural and physical resources of the State of South Dakota, and for the

purpose of developing the resources, and operating and carrying on works of internal improvement in the State of South Dakota, any county of this state, as lessor, through its board of county commissioners, is hereby authorized to execute and issue in the name of such county leases for the exploration and development of, and production of oil or gas from any of the lands belonging to any county of this state acquired in satisfaction of a school-fund loan mortgage or through foreclosure of such, or acquired through tax-deed proceedings or in payment of taxes, to any lessees for such a term of years and upon such terms as may be prescribed and contracted by the board of county commissioners of any county in the state in the exercise of their best judgment, to induce drilling operations and production of oil or gas in paying quantities. (SDCL 7-31-38) All such leases as described in § 7-31-38 shall provide for the delivery to the said county in the pipeline to which said lessee may connect the wells, of a royalty of one-eighth of the oil or gas produced, saved, and marketed from the leased lands, or the equivalent proportion of the market value of such oil and gas in the field at the time of production, at the option of the said board of county commissioners; provided, however, no royalty shall be payable from oil or gas used in operations on the land for the development of oil or gas there from. Provided, further, that of the oil or gas so used, the same shall be in the proportion of seven-eighths belonging to the lessee or assigns, and one-eighth which but for such use would be delivered to the said county lessor. (SDCL 7-31-39) All leases issued under the provisions of § 7-31-38 shall be assignable in whole or in part, provided no assignment of less than a legal subdivision shall be recognized or approved by the said county. The term legal subdivision as used in this section shall be construed in its ordinary sense as used and recognized in the Bureau of Land Management of the United States. The assignment provided for herein shall be executed and acknowledged in duplicate in the manner prescribed for the conveyance of real estate in this state and subject to recording as other instruments conveying real estate, with like force and effect. (SDCL 7-31-40) The said board of county commissioners is likewise hereby authorized to sell, assign, or otherwise dispose of any leases to, or interests in, any of said oil or gas rights mentioned in §§ 7-31-38 to 7-31-43, inclusive, or any fraction or part thereof belonging to said county, and such sales are hereby authorized to be made accordingly, whether private or by public auction, or either or both. (SDCL 7-31-44)

The board of county commissioners of any county is hereby authorized to cancel any lease issued as provided in § 7-31-38 for nonpayment of rentals, if any are required by the lease, or for nonperformance by the lessee of any provision or requirement of the lease; provided, however, that if such cancellation shall be made the said board of county commissioners must mail to the said lessee, or assigns, by registered or certified letter addressed to the post office address of said lessee or assignee, a notice of intention to cancel said lease, specifying the default for which the lease is subject to cancellation, and if within thirty days after the mailing of said notice to the said lessee or assignee, he shall remedy the default specified in said notice, then no cancellation of said lease shall be ordered by the board of county commissioners, but otherwise the cancellation shall be made and all rights of the lessee or assignee under the lease shall thereupon terminate. (SDCL 7-31-41)

The boards of county commissioners of the several counties of the state are hereby authorized in their discretion, to enter by resolution into agreements, with respect to acreage or oil or gas rights owned by the several counties, for the pooling of such acreage with other acreage for unit operations for the production of oil or gas and for the apportionment of oil or gas royalties on an acreage or other equitable basis. (SDCL 7-31-37)

7.014 Distribution of Rental Proceeds

The rental proceeds in any one year from the real estate acquired by counties under tax deed shall, after deducting the expenses of taking such tax deed and after deducting an amount agreed upon by the

board of county commissioners necessary for general administrative expenses of tax-deed land, be apportioned by the county officials controlling such proceeds in the same manner as taxes on real estate due and payable during the same year are apportioned. (SDCL 7-31-12)

The rental proceeds from real estate acquired by counties in satisfaction of a school-loan mortgage or through foreclosure of such shall be distributed as provided by existing laws. (SDCL 7-31-13)

The board of county commissioners may, whenever it appears to be for the best interests of the county and other taxing districts, procure insurance against the hazards of fire, windstorm, tornado, and hail, on buildings held by the county, or in which the county has an interest, situated on land acquired by tax-deed proceedings, foreclosure of school-fund mortgage, or otherwise, and the cost thereof shall be deducted from rentals of such land and buildings in the same manner as administrative expenses, as provided in § 7-31-12. (SDCL 7-31-14)

7.015 Refunding of Rental Paid by Mistake

No expressed statutory authority exists for a county board to refund rentals to a lessee of county tax deed land because the title to the land is invalid. The situation is similar to the rule of the refunding of taxes paid by mistake. (AGR 1949-50, pp. 62-63)

7.001 Action to Quite Title of Tax Deed Property

Any county that has acquired or may acquire title to any land by tax deed may commence an action in the county to quiet the title to the land. In any such action, several tracts of land, contiguous or noncontiguous, may be included in one complaint and all persons claiming any title to, interest in, or lien upon any of the lands may be joined as defendants. Upon request of the board of county commissioners of the county, the state's attorney shall promptly commence and prosecute to final judgment any such action. (SDCL 10-25-24) One should refer to the South Dakota Codified laws for additional information involving the quieting of title. (SDCL 21-42-1 through 21-42-21)

7.002 Reconveyance by Quit Claim Deed to Tax Property

The county commissioners shall have authority to authorize a reconveyance by quitclaim deed to the record owner or his assignees or successors only of any real estate held by the county under tax-deed title only, at any consideration not less than the total principal, interest, and costs of all taxes represented in the tax deed and any other taxes and interest which are unpaid upon said real estate. (SDCL 10-25-41) Nothing contained in § 10-25-41 limits the discretion of the county commissioners to fix any higher price for such reconveyance or to annex to the reconveyance any such conditions or qualifications as the county commissioners may decide. (SDCL 10-25-42) Even though the property represented in the tax deed is immune from taxes, the county board may demand an amount equivalent to the taxes in addition to the minimum consideration required by statute. If the property can be sold at tax resale at a higher price than through reconveyance, the board should offer the property for sale at tax resale (AGR 1947-48, p. 232). As reconveyance is tantamount to a sale, the action terminates any existing lease on the land. (AGR 1945-46, p. 35) Such reconveyance of tax deed is not authorized when the property has been sold at a tax resale and the contract for deed is still in force. (AGR 1949-50, p. 194) AGR 1949-50, p. 194)

7.003 Sale or Lease of Property Held for Public Purposes

Notwithstanding any provisions of law to the contrary, the commissioners may, by majority vote, lease or convey upon such conditions as the board shall set forth, real property for the purpose of providing health care.

Any county may lease real property within the county from federal or state agencies to promote, establish and maintain recreational, industrial or economic development opportunities and may sublease the property to any person for any such authorized public purpose. Any lease or sublease shall be authorized on the terms and in the manner provided by resolution of the commissioners, and the provisions of Chapter 7-30 do not apply.

7.004 Donation of County Lands

Whenever the board of county commissioners determines that it is in the public interest, and, in particular, to the interest of the county, said board is hereby authorized to donate by quitclaim deed to

the United States of America the vested and after-acquired title to any lands now, or hereafter, belonging to such county, whether such lands be acquired by grant, donation, tax-title proceedings, or otherwise, for sites for dams, reservoirs, and power plants; and said board is further authorized to donate to the United States, over and upon any such acquired lands, easements and rights of way for canals, laterals, tunnels, roads, campsites, and telephone and transmission lines necessary to the construction and operation of any irrigation works or power plants constructed by or under the authority of the United States, and all conveyances by the county of such lands shall be made subject to the grant of such easements and rights of way. All conveyances shall be executed in the name of the county by the chairman of the board of county commissioners and attested by the county auditor. (SDCL 7-29-18)

The board of county commissioners is hereby granted the power to appropriate moneys out of the general funds of the county for the purpose of acquiring lands, easements, rights of way, and any other interests in lands to be donated to the United States as provided in § 7-29-18, and to exercise the right of eminent domain to acquire such lands, easements, rights-of-way, and other interests in said lands. (SDCL 7-29-19)

The State of South Dakota, through its several departments, agencies, and institutions, and counties through their boards of county commissioners, may grant perpetual easements on lands under their control, dedicating to the public permanent use of the same in the use of water conservation projects or public parks, and may grant easements on or over such lands to any person, association, or corporation, granting the right to erect and maintain poles and wires for the purpose of conducting or transmitting electricity for lighting, heating, and power purposes. The Board of Regents and the executive branch may also grant easements for water, sewer, and fuel lines on land, or air rights over land, at the institutions under their control, which shall be executed pursuant to § 5-2-11. (SDCL 5-2-10)

Whenever the board of county commissioners determines that it is in the public interest, and in particular, to the interest of the county, the board may donate or sell and convey by quitclaim deed or easement to the State of South Dakota, for highway right-of-way purposes, the county's interest in any land it may have acquired by tax deed proceedings, without complying with chapter 6-13, or may dedicate for highway purposes any land it may have so acquired by filing a plat or dedication of same fully describing the bounds of said right-of-way, and thereafter, all conveyances made of said land shall be made subject to the conveyance, grant or dedication of said right-of-way. All such conveyances, easements, or dedications shall be executed in the name of the county, by the chairman of the board of county commissioners, and attested by the county auditor, and shall contain a provision that when said property conveyed or dedicated ceases for the period of two years to be used as a public highway same shall revert to the county or its assigns. (SDCL 31-20-5)

As tax deed property is acquired as a method of collecting taxes, it is held in trust for all taxing districts within the county for taxes assessed against it for which it is to be sold. The county board is required to sell the property at tax resale. It may not donate the land for county parks or any other uses except as specifically provided by law. (AGR 1949-50, pp. 417-418)

Any county, municipality, sanitary district, township, or school district may convey and transfer any real property which is held or owned by it, the title to which has been obtained and which is not held for public use or which is about to be abandoned for public purposes, to another political subdivision or nonprofit corporation for public purposes and accommodation without offering the property for sale and without requiring said political subdivision or nonprofit corporation to pay therefore. (SDCL 6-5-2) If the governing body deems it advisable and to the best interest of the public to convey any such property to another political subdivision or nonprofit corporation pursuant to § 6-5-2, it shall by resolution direct that said property be so conveyed and transferred. Thereupon a deed of conveyance shall be made to

the political subdivision or nonprofit corporation, which deed vests in the grantee all the right, title and interest of the transferor in and to the real property so conveyed. (SDCL 6-5-3)(AGR No. 74-52)

7.005 Lease of Real Estate Not Included in County Land Administration and Managements Act

The provisions in the County Land Administration and Management Act dealing with the leasing of land take precedence over the general county property statutes when in conflict with them (AGR 1943-44, p. 68). All real estate belonging to any county in this state, and not required for immediate public use, may be leased as hereinafter provided. Such real estate, except such as is located within the area of a cooperative grazing association and leased to such association, shall be offered for lease at public auction at the courthouse of the county within which such real estate is situated. If there be no courthouse, then at the building in which the office of the county auditor is located. The annual leasing date of such property shall be fixed by the board of county commissioners each year and advertised accordingly. (SDCL 7-30-1) A notice of such leasing shall be published in the official newspapers of the county once during each of the two calendar weeks preceding the auction, stating the time and place at which the leasing of such lands will begin. (SDCL 7-30-2) However, unused rooms in a county courthouse may not be leased to private persons for their private business. (AGR No. 69-18)

If such real estate is to be leased for residence purposes only, and does not include the lease of any agricultural or grazing lands, it may be leased on terms of month-to-month leasing by resolution of the county commissioners without public auction or advertising. The resolution of the county commissioners in such cases shall recite the monthly rental of such property. If any person shall offer to pay in advance a monthly rental twenty-five percent in excess of the rental then being paid for such residence property, the county commissioners must accept the same upon deposit of such rental in advance. (SDCL 7-30-14)

Each tract shall be leased to the highest bidder, provided any former lessor shall have prior right to lease at the highest bid in case land offered is under his fence or enclosure. Before the auction date the board of county commissioners shall fix by resolution a minimum rental rate and no bid shall be accepted which is less than such minimum. (SDCL 7-30-4) Whenever the highest offer for any tract of land payable in cash is satisfactory, such bidder shall immediately pay to the county treasurer the amount specified as the annual rental for the tract, and take the treasurer's receipt therefore, a copy of which shall be retained by the treasurer in his office. The bidder shall exhibit such receipt to the county auditor, who shall thereupon prepare a lease of such tract in duplicate to be signed by the county auditor and the lessee, one copy to be given to the lessee and one copy to be retained by the county auditor in his office. (SDCL 7-30-5) The form of the lease shall be such as may have been prescribed by the board of county commissioners, provided, whenever the leasing of a legal subdivision of less than one quarter section containing a water privilege or right shall jeopardize the leasing price of the remaining acreage of said quarter section, no lease of a legal subdivision shall be granted to the lessee unless the lessee shall lease the entire quarter section. (SDCL 7-30-6) If any of the land offered for lease is land under cultivation, the commissioners may lease the same either for cash or upon part cash and part sharecrop basis or entirely upon a sharecrop basis according to the bid which in their discretion they may decide to be to the best interest of the taxing districts involved. In case of share rent or part share rent, the lease shall provide for a lien upon the crop and the same shall be filed for record notice of such lien. (SDCL 7-30-7)

The lease authorized under the provisions of this chapter shall be on such terms and conditions as the board of county commissioners may determine to be most advantageous to such county, unless otherwise provided by statute. (SDCL 7-30-8) Any lease for more than the current calendar year shall

terminate on the last day of January of any year unless the lessee pays prior thereto the amount of the annual rental for the next succeeding year to the county treasurer. (SDCL 7-30-9) Reservation of the right to sell leased county land includes the right to exchange it, and the lessee is subject to the termination restriction as when the land has been sold. (Holmes v. Miller, 71 SD 258, 23 NW2nd 794 (1946))

7.006 Private Leasing of Real Estate

Any tracts not leased at said annual auction or acquired thereafter may be privately leased by the county auditor, but for not less than the minimum price set by the board of county commissioners and for the current year only. (SDCL 7-30-12) Nothing in this chapter shall be construed so as to prevent the board of county commissioners from leasing all such real estate, except residence property, after the auction date on such terms and conditions as the board may determine. (SDCL 7-30-13)

7.007 Employment of Real Estate Agents

The board of county commissioners of any county in this state which has an area of two hundred fifty thousand acres or more in which five percent or more of the taxable land of said county has been acquired, or which is subject to acquisition by the county, through the foreclosure of school-loan mortgages or through tax-deed proceedings or other source, except lands owned and held by the county for public use, may, in their discretion and whenever they deem it in the best interests of the county, employ any necessary agent or agents to expedite the rental and sale of real property acquired by the county and to assist the county treasurer in instituting tax-deed proceedings against property upon which the county holds or may hereafter acquire tax sale certificates. (SDCL 7-31-45)

Any agent or agents employed under the provisions of § 7-31-45 shall receive such compensation as may be determined by the board of county commissioners, and the board shall have authority to employ any clerical help and provide any office space and office supplies which may be necessary to carry out the provisions of §§ 7-31-45 to 7-31-48, inclusive. (SDCL 7-31-48)

7.008 Purchase of Real Estate at Execution Sale

Whenever any real estate shall be advertised to be sold at execution sale, held pursuant to any judgment in an action to which any county shall be a party, the board of county commissioners of such county may instruct the county auditor to bid in such real estate in the name of the county and shall fix the maximum price to be by him bid for such real estate. It shall be the duty of the county auditor upon the receipt of such instructions to attend such sale and, in case no more shall be bid for such real estate than the maximum amount fixed by such board, to purchase such real estate at the lowest price at which the same can be procured. Any county is authorized to hold in its own name and for its own benefit all real estate acquired under the provisions of this section. (SDCL 7-19-2)

7.009 Exchange or Lease of County and Private Land

In order to carry out the purpose of this chapter and to provide for efficient administration and management of county lands and to secure the maximum revenue there from the board of county commissioners are hereby authorized and empowered to exchange by transfer of title or lease scattered and isolated tracts and sections of county-owned lands for other public or private lands of like character in value, and to execute proper conveyances or leases thereof, in manner and form as provided by existing laws, but without the necessity of complying with any statute requiring advertising, notice, or appraisement, and to accept in return therefore a proper instrument of conveyance to the county of lands for which such lands are exchanged. Lands acquired by exchange shall be sold and leased as

provided herein. (SDCL 7-31-32) Land adjoining other county owned land is not a "scattered and isolated tract" (Homes v. Miller, 71 SD 258, 23 NW2d 794 (1946)). Moreover, county land may be exchanged for private land only when the exchange is beneficial to county land administration. (AGR 1943-44, p.41)

Where the exchange of land shall result in the acquisition by the county of land in a different taxing district than the land which the county has exchanged for, the county commissioners shall pay or adjust any claim for taxes which such district or districts may have against such exchanged lands, and shall be authorized to compromise any claim or claims for taxes or penalty and interest as may be agreed upon between the county commissioners and the governing bodies of such district or districts, all moneys received from the newly acquired land shall be apportioned in the same manner as if no such exchange had been made. (SDCL 7-31-33)

In order to pay the taxes at the time of the exchange of county land, a budget appropriation must exist for that purpose. To pay or adjust does not necessarily mean, however, that the payment or adjustment of taxes must be made at the time of making the exchange. An agreement between the county board and the governing board of the taxing district on a future adjustment will suffice. (AGR 1945-046, pp. 24-25)

All counties, municipalities, sanitary districts, improvement districts, townships, and school districts of this state may exchange with each other and to transfer and convey from one to the other any land or property belonging to them and under their respective jurisdictions and to perform and exchange work between themselves. All transfers of property and work as authorized by this section shall be upon such terms and conditions as may be determined and agreed upon by the respective governing bodies thereof. (SDCL 6-5-1) Under this section a county and city may exchange outright grants on long term leases, such as an easement to a town, to a portion of the courthouse square for the purpose of constructing and maintaining a town library. (AGR 1961-62, pp. 6-7)

Any county of this state is hereby authorized and empowered to purchase property, with money from its general fund or otherwise, and thereafter to transfer and convey such property so purchased to any municipal corporation within or partly within the boundary of such county in exchange for property owned by such municipality, provided the property so transferred and conveyed to the county is for a public use and purpose. Said transfers of property shall be upon such terms and conditions as may be determined and agreed upon by the respective governing bodies thereof. (SDCL 7-29-20)

Whenever land under the jurisdiction of the commissioner of school and public lands has been lawfully selected and authorized for purchase, as herein provided, located on a section line or a regularly established highway at one corner of a legal subdivision not within forty rods of any residence, without the consent of the owner thereof, and a plot of the land so selected shall have been in the Office of the Commissioner of School and Public Lands, the Board of School and Public Lands is authorized to direct an appraisement of such site and the same shall be appraised in the manner provided by law for the appraisement of school and public lands. Such appraisement shall not be less than the minimum price fixed by the Constitution for school and public lands. (SDCL 13-24-3)

A county may not enter into work agreements on private land on a rental basis (AGR 1959-60, p. 368). The board of supervisors of any township or a board of county commissioners may lease to a contractor any scraper, grader, or other road tools or machinery belonging to the township or county. (SDCL 31-11-28; AGR 1959-60, p. 368)

The State of South Dakota, through its several departments, agencies, and institutions, and counties through their boards of county commissioners, may grant perpetual easements on lands under their control, dedicating to the public permanent use of the same in the use of water conservation projects or public parks, and may grant easements on or over such lands to any person, association, or corporation, granting the right to erect and maintain poles and wires for the purpose of conducting or transmitting electricity for lighting, heating, and power purposes. The Board of Regents and the executive branch

may also grant easements for water, sewer, and fuel lines on land, or air rights over land, at the institutions under their control, which shall be executed pursuant to § 5-2-11. (SDCL 5-2-10)

Any county, municipality, sanitary district, township, or school district may convey and transfer any real property which is held or owned by it, the title to which has been obtained and which is not held for public use or which is about to be abandoned for public purposes, to another political subdivision or nonprofit corporation for public purposes and accommodation without offering the property for sale and without requiring said political subdivision or nonprofit corporation to pay therefore. (SDCL 6-5-2) If the governing body deems it advisable and to the best interest of the public to convey any such property to another political subdivision or nonprofit corporation pursuant to § 6-5-2, it shall by resolution direct that said property be so conveyed and transferred. Thereupon a deed of conveyance shall be made to the political subdivision or nonprofit corporation, which deed vests in the grantee all the right, title and interest of the transferor in and to the real property so conveyed. (SDCL 6-5-3)

7.010 Exchange of Land with the State or Federal Government

A board of county commissioners may, with the approval of the appropriate department of the State of South Dakota or the federal government, exchange scattered and isolated tracts and sections of land belonging to such county for lands belonging to the State of South Dakota or to the United States Government, value for value, and may execute proper conveyances thereof in manner and in form as provided by existing laws but without the necessity of complying with any statute requiring advertising, notice or appraisement and may accept in return therefore a proper instrument of conveyance to the county of the lands for which such lands are exchanged. (SDCL 7-29-15) Any municipality or other political subdivision of the State of South Dakota, is hereby authorized and empowered to exchange by and with the approval of the federal government, or any agency thereof, any lands or other properties belonging to such municipality or such political subdivision for any lands belonging to the United States of America, or any agency thereof, located within the county making such exchange, or located within the county in which such municipality or such political subdivision is situated. Such exchanges, transfers, and conveyances from one to the other shall be made upon such terms, conditions, and in such manner as may be determined and agreed upon by the parties to such exchanges. (SDCL 9-27-34)

7.011 Disposition of property of Consolidated Counties

The property of each of such consolidated counties shall after consolidation become the property of the new county. The indebtedness, if any, of each of such counties shall after consolidation be paid out of the taxes levied on the property in the respective territory of the county having contracted the same. (SDCL 7-2-12)

7.012 Acquisition of Historic Sites and the County Historic Preservation Commission

The board of county commissioners may, in its discretion, acquire without cost to the county historic sites located in said county and objects of historic interest including newspapers, magazines, and writings of historical interest of any sort or type whatsoever, and may provide in the county courthouse or elsewhere in the said county a room or rooms for the preservation, display, and maintenance of such objects and writings. They may cause to be erected within the said county suitable markers for any such historic site. (SDCL 7-26-3) The board of county commissioners may erect in a suitable place a monument suitable to honor and perpetuate the memory of all American veterans from the county and for such purpose may appropriate a sum not to exceed ten thousand dollars. The board shall provide continued maintenance and repair of such monument. (SDCL 7-26-1)

The activities of the historic preservation commission are governed by the provisions of SDCL chapter 1-19B.

1-19B-1 Legislative findings--Purpose of chapter.
1-19B-2 County and municipal historic preservation commissions--Purpose.
1-19B-3 Composition of preservation commission--Residence--Terms of office.
1-19B-4 Employment of personnel.
1-19B-5 Annual special purpose tax levy--Approval by voters required.
1-19B-6 Revenue bonds authorized.
1-19B-7 Appropriations for operating expenses, acquisition & management of historic properties.

7.013 Abandoned Cemeteries

The board of county commissioners may regulate and maintain abandoned rural cemeteries. The regulation and maintenance shall include, but is not limited to, the mowing and cutting of weeds and grass, the repairing of fences and corrective measures relative to grave markers. The board of county commissioners may appoint a cemetery board of directors to manage abandoned cemeteries or may assign management as well as funding responsibilities to any interested organization or individual. The board shall have the same powers as nonprofit corporations as provided in § 47-22-55 and shall submit annual reports to the board of county commissioners on its activities. Funds necessary to carry out the provisions of this section may be appropriated from the county general fund. (SDCL 7-26-7)

For the purposes of § 7-26-7 the term "abandoned cemetery" means a cemetery, in which no burial of a human body has taken place for five years and which has not been, for a period of five or more years, maintained by any person, church, religious or benevolent society, or any civic organization. (SDCL 7-26-6)

7.014 Tax Exemptions of County and Other Property

The constitution of South Dakota provides that the property of the United States and of the state, county and municipal corporation, both real and personal, is exempt from taxation (CN XI, 5). These exemptions are without limitation or condition. Such property is exempt from taxation regardless or the use to which it is put or its location (City of Yankton v. Madison, 70 SD 627, 20NW2d 371 (1945); AGR 1959-60, pp. 185-186).

All real property, irrespective of the person or persons to whom the same shall be assessed, acquired by the State of South Dakota or by any political or executive subdivision thereof, and used exclusively for public highway purposes, shall be exempt from taxation. (SDCL 10-4-8)

All real property in this state and the property of corporations existing or hereafter created, and the property of all banks or banking companies existing or hereafter created, except such as is hereinafter expressly excepted, is subject to taxation; and such property, or the value thereof, shall be entered in the list of taxable property for that purpose, in the manner prescribed in chapter 10-6. (SDCL 10-4-1)

The director of equalization shall publish at least six days prior to the last Tuesday of March of each year in the official newspapers published in the county a list showing the legal owner, utilization, and a description of all property for which tax-exempt status is claimed under §§ 10-4-9 to 10-4-14, inclusive. (SDCL 10-4-15.1)

School property, including houses provided staff members on a rent basis, is not subject to taxation. The school district is included within the term “municipal corporation” as used in the constitutional provision exempting public property from taxation. (Cn. XI, 5; Egan Consolidated School District No. 1 v. Minnehaha County, 65 SD 32, 270 NW 527 (1936); AGR 1961-62, pp. 39-40)

State owned property which is leased to concessionaires is not taxable if the lease is of a conditional nature. The constitutional provision exempting public property from taxation is self-executing without the necessity of legislation. However, the legislature has provided for the assessment of leasehold interests in otherwise exempt property if the property is held under a lease for a definite term of three or more years or if a contract is entered into for the purchase of it. This provision applies to property of the state or to any religious, scientific or benevolent society or institution, or to any railroad company or corporation either party prior to three years; it is of a conditional nature and is not subject to taxation on the part of the lessee. Privately owned property of the lessee used in operating concessions on state owned property is subject to taxation. (Cn. XI, 5, SDCL 10-4-23; AGR 1959-60, pp. 356-358)

7.015 Federal Condemnation of County Land

The representatives of the United States shall submit any proposed proceedings to acquire land by condemnation for wildlife mitigation pursuant to P.L. 94-355 as amended to July 1, 1976, to the board of county commissioners of the county or counties in which the affected areas are located for the boards' approval prior to initiating any condemnation proceedings. (SDCL 41-3-4.2)

County Buildings

7.101 Authorization to Construct County Buildings

In any county where there is no courthouse or jail erected by the county, or no lodging for prisoners provided under a joint agreement pursuant to § 24-11-4, or where those erected have not sufficient capacity, it shall be the duty of the board of county commissioners to provide for courtroom, jail, and offices for the following named officers: sheriff, treasurer, register of deeds, state's attorney, auditor, clerk of courts, and circuit court judge for the county, to be furnished by such county in a suitable building or buildings for the lowest rent to be obtained at the county seat, or to secure and occupy suitable rooms at a free rent within the limits of the county seat or any of the additions thereto until such county builds a courthouse. (SDCL 7-25-17)

The county commissioners may erect, maintain, repair, remodel, and otherwise improve upon any ground owned or acquired by purchase, including by contract for deed or lease with purchase option, lease, gift, bequest, or otherwise, any building to be used for the exhibition of stock, farm produce, school work, and domestic arts, or for the sale of livestock, or for farmers' or other meetings or any other purpose which in the discretion of the county commissioners is to the benefit of the best interests of the county. The board may purchase, including by contract for deed or lease with purchase option, lease, or otherwise acquire by gift, bequest, or otherwise, any other real property in the county with or without buildings thereon, or lease space in any building within the county, for any of the above specified purposes. The county commissioners may levy a tax for any of the purposes not to exceed thirty cents per thousand dollars of taxable valuation of taxable property in the county. The levy authorized by this section is in addition to the levy authorized in § 10-12-21. (SDCL 7-27-1) The tax levied for the purpose of a county agriculture building as provided in SDCL 7-27-1 is in addition to the authorized in DSCL 10-12-21.

The board of county commissioners shall have authority to provide for the erection, renovation, improvement, remodeling, alteration, addition to, and repairing of courthouses, jails, memorial buildings, which may contain an auditorium, and other necessary buildings within and for the county and to make contracts on behalf of the county for such purposes; but no expenditure for these purposes, greater than can be paid for out of the annual revenue of the county for the current year, including for courthouse, office, and jail buildings the revenue from the special levy provided by § 7-25-

1, together with the amount of any debt service fund theretofore provided for such purpose, shall be made unless the question of such expenditure shall have first been submitted to a vote of the qualified voters of such county and shall have been approved by a majority of the votes so cast; and the board shall determine the amount and rate of taxes to be submitted to a vote for such purpose. (SDCL 7-25-3)

Whenever the question of bonding the county for the purpose of bonding the county for the purpose of building or renovating, improving, remodeling, altering, adding to, or repairing a courthouse, jail, memorial building, or other county buildings shall have been submitted to a vote of the voters and such bond issue shall have been carried by a vote of the voters, then in addition to the proceeds raised from the sale of such bonds the board may, whenever there remains in the treasury of such county an unexpended balance of any special fund and all claims against such fund have been fully paid, or when there remains an unexpended balance of the general fund and all claims against such fund have been fully paid, in its discretion, apply the whole or any part of such accumulated funds to the purposes specified in this section and it shall not be necessary to submit the question of such expenditure to the voters of the county. (SDCL 7-25-4)

The county board is not authorized to lease county buildings to private persons for an extended period of time to the exclusion of the public generally. (AGR 1933-34, p. 161; 1953-54, pp. 257-258)

The State of South Dakota, acting through the Department of Military and Veterans Affairs in participation with the federal government, and any county, municipal corporation, school district, or any department, agency, or board of the state or combination thereof, acting through their governing boards, may cooperate, on such terms as may be agreed to by the Board of Military Affairs and the governing boards of the public corporations or other agencies in the construction, enlargement, conversion, and equipment of the buildings described in § 33-11-2, including acquisition of sites for such buildings, and in the operation, maintenance, and use of such buildings. (SDCL 33-11-3) The buildings referred to in § 33-11-3 shall be suitable for use as armories or other facilities by the National Guard. The buildings shall also be suitable for use by a cooperating public corporation or agency for the same purposes as a building that the corporation or agency is authorized by law to construct for its own exclusive use and shall be used for such purposes. (SDCL 33-11-4) (AGR 1959-60, pp. 207-208)

The standards and specifications set forth in § 5-14-13 apply to all buildings and facilities used by the public which are constructed in whole or in part by the use of state, county, or municipal funds, or the funds of any political subdivision of the state. All such buildings and facilities constructed or remodeled after January 26, 1992, shall conform to these standards. These standards and specifications shall be adhered to in those buildings and facilities which were in the planning stage on January 26, 1992, and for all new constructions. (SDCL 5-14-12) All public buildings and facilities providing facilities for the wheelchair user, including but not limited to entrance and exit facilities, shall display at all entrances the internationally recognized symbol for wheelchair users. (SDCL 5-14-13.1)

7.102 Creation of Courthouse, Office, or Jail Building Funds

The board of county commissioners may levy a tax not to exceed ninety cents per thousand dollars of taxable valuation to be used or paid into a fund for the purpose of acquiring a site, constructing, renovating, improving, remodeling, altering, adding to, repairing, erecting, or maintaining a courthouse, office, jail building, county exhibition buildings, 4-H and extension buildings, grandstands and bleachers, highway maintenance buildings, or public library. The county may cooperate in a joint undertaking for any of the foregoing purposes with any other county, municipality or school district. The levy authorized by this section is in addition to the levy authorized in § 10-12-21. The proceeds of the levy authorized by this section may be pledged by the county to payments under an agreement entered into pursuant to § 7-25-19 without regard to the limitations of § 7-25-3. (SDCL 7-25-1)

The board of county commissioners shall have the power to loan or invest any balance of any such fund as referred to in § 7-25-1 upon first mortgages upon real property worth at least double the value of the sum loaned, or upon bonds of the State of South Dakota, or upon bonds or warrants of the county, or upon bonds of any municipality or school district within the county, at such legal rate of interest as may be agreed, and may also loan or invest such funds in United States government bonds, and the income from such loans shall be paid into such fund. (SDCL 7-25-2)

Investments of public funds as defined in § 4-5-5 shall be made only after the adoption of a proper resolution by the governing board of such county, municipality, township, or school district. Such resolution shall state the investment policies to be followed by the treasurer thereof. (SDCL 4-5-8)

After a fund for the construction of a courthouse, office, or jail building, county exhibition buildings, 4-H and extension buildings, grandstands and bleachers, and highway maintenance buildings has accumulated from any source, it shall be the duty of the board of county commissioners within one year from the time such fund becomes available to proceed to the erection of such building or buildings, if such fund shall in the judgment of the board be sufficient for that purpose. (SDCL 7-25-5)

The courthouse, office and jail building, may be used for building an addition to or enlarging the existing courthouse structure (AGR 1955-56, pp. 330-331). Although the special tax levied for the special fund may be used to erect a separate and distinct annex to the present building., the county board has no authority to purchase an independent buildings located on adjacent lots. The board has the authority to determine how the fund will be used for the erection of a courthouse or jail or an addition to an existing courthouse or jail. (AGR 1957-58, p. 70)

7.103 County Exhibition Building

The county commissioners may erect, maintain, repair, remodel, and otherwise improve upon any ground owned or acquired by purchase, including by contract for deed or lease with purchase option, lease, gift, bequest, or otherwise, any building to be used for the exhibition of stock, farm produce, school work, and domestic arts, or for the sale of livestock, or for farmers' or other meetings or any other purpose which in the discretion of the county commissioners is to the benefit of the best interests of the county. The board may purchase, including by contract for deed or lease with purchase option, lease, or otherwise acquire by gift, bequest, or otherwise, any other real property in the county with or without buildings thereon, or lease space in any building within the county, for any of the above specified purposes. The county commissioners may levy a tax for any of the purposes not to exceed thirty cents per thousand dollars of taxable valuation of taxable property in the county. The levy authorized by this section is in addition to the levy authorized in § 10-12-21. (SDCL 7-27-1) The board members are the sole judges of whether or not the buildings are to be erected and the tax authorized be levied. The cost must be paid from the annual revenue of the county for the current year, together with the amount of the special sinking fund; otherwise, indebtedness must be incurred by issuing bonds, which can only be authorized by the county electors. (AGR 1949-50, pp. 398-399; 1959-60, pp. 89-91)

Where the county constructs a county agricultural building and collects rentals, all such income should be placed in the special county agricultural fund. The maintenance costs should also be paid out of the special fund. The county has authority to lease the building and allow its use for the purpose of livestock sales. No authority exists, however, for the county to enter into the proprietary business of conducting a livestock sales agency. (AGR 1953-54, pp. 391-392)

7.104 Joint County and Municipal Building

The board of county commissioners of any county and the governing body of the county seat of such county, whenever both of such governing bodies by separate resolutions declare that it is for the best

interests of the county, or municipality to erect and maintain a joint building for county, municipal, community, and memorial purposes, shall have the power to employ competent architects and engineers and secure plans and specifications for such proposed joint building and shall determine the approximate cost thereof and the proportion thereof to be borne by each. (SDCL 6-3-9) After the governing bodies have decided and agreed upon plans and specifications that will provide for all of the needs of the county, municipality, and community and after determining the approximate costs thereof, the governing bodies shall submit the question of issuing bonds of the county and municipality, to cover its share of expense of joint building at the same time and at the same election. (SDCL 6-3-10) After the issuance of bonds is authorized as provided in § 6-3-10, it shall be lawful for the county and municipality to join in the erection and completion of such building, and they shall have authority to make provisions for the maintenance of the same. The site for any such building shall be determined upon by the commissioners and the governing body and they shall have authority to use any site owned by either or they may secure a new site. (SDCL 6-3-12) The title to the site and improvements of it must be held jointly or by one or the other subdivision of government (AGR 1949-50,p. 213) Counties or municipalities joining pursuant to § 6-3-12 are authorized to use any and all moneys realized from taxes levied for county, municipal, community, or memorial buildings, and the governing board of any county or municipality so joining is hereby empowered to transfer any building fund moneys now on hand to a special fund to be used for the purpose specified in § 6-3-9, except that funds heretofore raised by taxation for a state memorial building shall not be used by said county. Such counties or municipalities so joining are further empowered to issue their bonds, as now provided by law, and accept private subscriptions and donations for the furtherance and maintenance of such buildings as are erected in compliance with §§ 6-3-9 to 6-3-13, inclusive. (SDCL 6-3-13)

As used in §§ 6-3-1 to 6-3-8, inclusive, the term, political subdivision, means any county, any municipality, improvement district, or any school district. Any two or more political subdivisions, each of which has territory overlapping that of all of the others, may agree in the manner set forth in § 6-3-2 to acquire a site for, purchase or construct, equip, furnish, operate, and maintain a public building for their common use, for the purposes authorized by law in the case of each such subdivision, or to improve, extend, equip, and furnish, for such purposes, any such building previously owned by the participating subdivisions or any of them. (SDCL 6-3-1) The agreement referred to in § 6-3-1 shall be set forth in writing, approved by resolutions of the governing bodies of the participating political subdivisions and executed by their officers thereunto duly authorized, and shall state the purposes for which the building or improvement shall be used, the estimated cost thereof, the estimated amount of such cost to be borne by each subdivision, the proportion and method of allocating the expenses of operation and maintenance of such building or improvement, and the disposition to be made of any revenues to be derived there from; and copies of such written agreement shall be filed and kept of public record by the recording officers of each participating subdivision. Such agreement may be amended or supplemented from time to time by action of the governing bodies of the participating subdivisions, and all such amendments or supplements shall be filed with the recording officers of the respective subdivisions. (SDCL 6-3-2) The governing body of each participating political subdivision may appropriate money or may also issue the general obligation bonds of the subdivision, as provided in chapter 6-8B for the authorization, issuance, and sale of bonds, for the payment of its share of the cost of the building or improvement. No bonds may be issued until provision has been made by each of the other participating subdivisions for the payment of the subdivision's share of the cost. (SDCL 6-3-3) The resolution or ordinance, notice and ballot as provided in chapter 6-8B shall include the estimated total cost of the building or improvement, the names of the other participating subdivisions, and shall refer to the agreement on file in the office of the recording officer. (SDCL 6-3-4)

7.105 Auditorium Building Fund

Any county, municipality, or school district operating or maintaining, either jointly or severally, an auditorium, coliseum, public gymnasium, or public community house, shall have the power to establish a fund and may collect for such fund not exceeding ten percent of the admission charge paid by each person, except such students or any other group or classification of persons which may be specifically exempted there from by the governing body, for admission to such building for any recreational, athletic, or educational activity, exhibition, or entertainment, whether conducted or sponsored by any municipality or any person, firm, organization, or public or private corporation. The money derived shall be kept separate from all other funds of the governmental subdivision and shall be known as the auditorium building fund, and shall not be used for any other purpose except the erection or remodeling of an auditorium, coliseum, public gymnasium, or public community house, and for the acquisition of sites and equipment therefore. (SDCL 6-4-1) The governing body may use the moneys in the auditorium building fund with any other funds that may come into its possession for the erection, construction, or remodeling of an auditorium, coliseum, public gymnasium, or public community house, and for the acquisition of sites and equipment therefore. (SDCL 6-4-3) The governing body of such county, municipality, or school district shall have power and authority to invest, from time to time and as such fund accumulates, the moneys derived there from in bonds of the State of South Dakota, bonds of any subdivision of government of this state, or bonds of the United States government, and the income derived from such investment shall be paid into and kept in such auditorium building fund. (SDCL 6-4-2)

Under the statute authorizing municipalities and other public corporations to establish an auditorium building fund and to use the money for construction of an auditorium, it was held by the South Dakota Supreme court that the city commissioners may employ architects to prepare plans for the proposed auditorium and pay for the services from the fund. They payment is permissible without resorting to competitive bids and even though a proposed bond issue for construction of the auditorium had been rejected earlier by the voters. (Foss v. Spitznagel, 77 SD 633, 97 NW2d 856 (1959))

7.106 County Monuments

The board of county commissioners may erect in a suitable place a monument suitable to honor and perpetuate the memory of all American veterans from the county and for such purpose may appropriate a sum not to exceed ten thousand dollars. The board shall provide continued maintenance and repair of such monument. (SDCL 7-26-1)

7.107 Acquisition of Building Sites

The board of county commissioners when authorized to erect any county building or joint county and municipal building shall have power to acquire ground for a site by purchase or condemnation. The board shall also have the entire supervision of the construction of all county buildings and monuments. (SDCL 7-25-6)

A county may acquire real property for building sites without advertising for bids. It may not purchase property, however, the title to which is defective without quieting the title to cure the defect. (AGR 1947-48, pp. 54-55)

If any municipality owns land which is suitable for a site upon which to build a courthouse for the county in which such municipality is located, and the county seat of such county has been permanently located in such municipality, fifteen percent of the registered voters of such municipality, based upon the total number of registered voters at the last preceding general election, may petition that the question of donating such site to the county for a courthouse building site be submitted to a vote of the municipality. The petition shall be filed with the municipal finance officer twenty days before the

election. The governing body shall submit the proposition to the voters of such municipality either at the annual municipal election or at a special election called for that purpose. The question shall be submitted on a separate ballot, which shall be in the form and which shall be cast in the manner provided by chapter 9-13. (SDCL 9-27-31) If a majority of those voting upon a proposition submitted pursuant to § 9-27-31 are in favor of such donation, the governing body shall be authorized to execute a conveyance to such land to such county for a courthouse building site. (SDCL 9-27-32)

If a county seat has been located at any municipality and the county has no courthouse, the municipality may borrow money on its credit to assist the county in building a courthouse and to issue bonds therefore. All bonds shall be authorized, issued, and sold as provided in chapter 6-8B. The bonds or proceeds thereof shall be used in constructing or aiding in the construction of a courthouse in the municipality on land owned by the county in which the same is located, and in consideration of the aid the municipality may contract with the county to use the courthouse for municipal purposes. (SDCL 9-26-13)

7.108 Contracts for County Buildings

Letting of contracts for county buildings comes under the general provision for the letting of contracts by the county. Whenever any county building is to be constructed, the board shall proceed as required by chapter 5-18. The time specified for opening of bids must be at one of the regular or duly adjourned sessions of the board. (SDCL 7-25-7)

Each bid shall contain a certified check, cashier's check, or bank money order, in the sum equal to five percent of the amount of the bid. The check or money order shall be certified or issued by either a state or national bank domiciled within this state made payable to the county or treasurer thereof. In lieu of a check or money order a bid bond for ten percent of the bid may be submitted. The bond shall be issued by a surety authorized to do business in this state and payable to the county or treasurer thereof as a guaranty that the bidder will enter into contract should it be awarded to him and furnish a bond as herein provided. Should the successful bidder forfeit his check, money order or bid bond, the proceeds of the same shall be turned into the county general fund. The checks, money orders or bid bonds of all the unsuccessful bidders shall be, by the board, immediately returned to the respective makers thereof. No more time may elapse between the opening of the bids and either the acceptance of the bid of the lowest responsible bidder, or the rejection of all bids presented than is permitted in § 5-18-7. (SDCL 7-25-9) Notwithstanding the provisions of § 7-25-9, the requirement of a bid bond, certified check, money order, cash, or other security may be waived when the bid submitted does not exceed two thousand dollars.(SDCL 7-25-9.1)

The lowest responsible bid in all cases shall be accepted and the contract for the building or buildings may permit progress payments, but if so shall provide for retention of not less than the following percentages: twelve percent of the amount of the contract up to fifty thousand dollars; five percent of the next two hundred thousand dollars of the amount of the contract and two and one-half percent of the amount of the contract in excess of two hundred fifty thousand dollars until the contract is fully executed and the building or buildings completed to the satisfaction and acceptance of the board of county commissioners. However, if the contractor has furnished the board all required records and reports and a final inspection has been made, the board shall pay to the contractor interest at the Category A rate of interest as established in § 54-3-16 on the amounts retained and on the final payment due the contractor beginning sixty days after the work under the contract has been completed, as evidenced either by the completion date established in the superintendent's or architect's letter of acceptance or by the use and occupancy of the building, and running until the date when payment is tendered to the contractor unless delay in payment has been the result of federal participation in such

contract, in which event interest may not begin until sixty days after payment by the federal authority involved. (SDCL 7-25-10)

The board may appoint a competent superintendent, who may be the architect furnishing the plans and specifications for such building or buildings and such superintendent shall report to the board every thirty days as to the progress and character of the work done by the contractor, and upon the reports of the superintendent payments to the extent of the percent specified in § 7-25-10 or the percent embodied in the contract shall be made to the contractor from time to time during the process of construction, divided into such installments as the board and the contractor may agree upon at the time of entering into the contract, and which shall be included in and be a part of the terms of the contract. None of such payments, however, shall be held to constitute an acceptance in whole or in part, by the board prior to the making of the final payment and acceptance in full completion of the contract. (SDCL 7-25-14)

The board must further require a bond from the contractor in a sum equal to the contract price, conditioned that the contractor will execute his contract and complete the building or buildings according to the plans and specifications and to the full satisfaction of the board, and account for all moneys paid to him and pay all bills and claims on account of labor or materials furnished in and about the performance of the contract including all demands of subcontractors, such bond to stand as security for all such bills, claims, and demands and to be a surety bond issued by some surety company authorized to do a surety bonding business in the state or a personal bond with sufficient sureties, to be approved by the board of county commissioners. (SDCL 7-25-12)

One copy of the plans and specifications for any building or buildings to be erected shall be and remain on file in the office of the county auditor at all times from the beginning of the publication of the advertisement for bids until the completion of the building or buildings. Any county auditor who shall allow or permit the original of any plans or specifications filed in his office, as in this section provided, to be taken away from his office after the same shall have been filed commits a petty offense. (SDCL 7-25-8)

7.109 Auditing Board

The county auditor, county treasurer, and some qualified voter and freeholder of such county appointed by the board of county commissioners, not a member thereof, shall act as a board of auditors to audit accounts of such board of county commissioners in connection with the erection of county buildings pursuant to the provisions of §§ 7-25-6 to 7-25-14, inclusive, and such board of auditors shall receive for their services the sum of three dollars each for every day actually and necessarily employed in such capacity to be paid upon the warrant of the board of county commissioners. (SDCL 7-25-15)

7.110 County Highway Shop

The board of county commissioners must not at any time or in any manner whatsoever make or provide for any appropriation or appropriations or for any expenditure or expenditures for any purpose, object, or item whatever, other than in and by the annual budget for the fiscal year as hereinbefore provided, and must not after the approval and adoption of such annual budget for any fiscal year make or provide for any increase in or addition to any amount appropriated for any purpose, object, or item in such annual budget, save and except as provided by §§ 7-21-21 and 7-21-22. (SDCL 7-21-20) (AGR 1957-58, p. 212)

County Airports

7.201 Establishment of County Airport

The board of county commissioners of any county in this state is hereby authorized to acquire, establish, construct, own, control, lease, equip, improve, maintain, operate, and regulate airports or landing fields for the use of airplanes and other aircraft within the limits of such counties, and may use for such purpose or purposes any property suitable therefore that is now or may at any time hereafter be owned or controlled by such county. The same power and jurisdiction is hereby provided for municipalities except that any municipality may exercise such powers either within or without the corporate limits of such municipality. Municipalities situated at or near the boundary line of an adjoining state may exercise such powers and jurisdiction over property and persons, for such purposes in such adjoining state and may maintain actions in the corporate name in the courts of such adjoining state for the exercise or protection of any rights authorized by this chapter. (SDCL 50-7-2) The governing body of a municipality or county may lease such airport or landing field or any portion thereof or any building or part of any building thereon or any airport facility for operating purposes to any responsible person or corporation upon such terms and conditions for a term of not to exceed twenty-five years as the governing body may approve. Upon taking effect of any lease of the entire airport lease, no liability for the negligent maintenance or operation of said airport or landing field building and facilities shall attach to the municipality or county, respectively nor shall it be liable in any event for the negligent maintenance or operation of any building or other facility leased to an operator or erected by an operator upon a leased site. (SDCL 50-7-3)

Any lands acquired, owned, controlled, or occupied by such municipalities or counties for the purposes enumerated in § 50-7-3 shall and are hereby declared to be acquired, owned, controlled, and occupied for a public purpose and as a matter of public necessity, and such municipalities or counties shall have the right to acquire public or private property for such purposes by purchase from the owner if agreement on the terms can be made and if not by condemnation in the manner provided by law under which the county, municipality is authorized to acquire real property for public purposes, or if there be no such law, in the manner provided generally for the condemnation of property for public use, or such municipalities and counties shall have the right to exchange lands owned by it for other lands of like character and value within the county or an abutting county whether privately owned or owned by the United States, the State of South Dakota or any of its political subdivisions. Said exchange shall be authorized by resolution of the governing body directing the execution of the necessary conveyance or conveyances to effect the same; such conveyance or conveyances shall be signed by the presiding officer of the governing body and attested by the auditor or clerk as the case may be. (SDCL 50-7-4)

The board of county commissioners may appropriate money for the purpose of paying the purchase price or award for real property acquired or to be acquired for an airport or landing field, and to pay therefore, wholly or partly by such appropriation. (SDCL 50-7-6) If the question of establishing a county airport shall not previously have been approved by a majority vote of the voters at an election at which such question was submitted, then any county desiring to establish and construct an airport shall state in the next published report of their proceedings their intention to establish and construct such airport stating the maximum amount which might be required to do so. If within sixty days from such publication a protest signed by fifteen percent of the voters of the county voting for Governor at the last general election be filed with such county commissioners, then no action shall be taken until the question shall have been submitted to a vote of the people and sixty percent of those voting shall vote in favor thereof. The question to be so submitted shall be, "Shall the county expend not to exceed $_____ to establish and construct an airport?" (SDCL 50-7-7)

The governing body of any municipality may appropriate money, levy a tax or issue the bonds of the municipality to pay the purchase price or award for real property acquired, or to be acquired, for an

airport or landing field, and to pay for it, wholly or partly, by an appropriation, tax levy or the proceeds of the bond issue. All bonds shall be authorized, issued and sold as provided in chapter 6-8B. (SDCL 50-7-8)

Any municipality or county owning and operating an airport which has been approved by the state Aeronautics Commission for public use may contract to construct, improve, and equip buildings, hangars, runways, and structures for the improvement of its municipal or county airport, and, in lieu of issuing general obligation bonds for the projects or financing them, the municipality or county may issue revenue bonds. All revenue bonds shall be authorized, issued and sold as provided in chapter 6-8B, except as specifically provided otherwise in this chapter. (SDCL 50-8-1) The revenue bonds shall be issued pursuant to and in accordance with the resolution or ordinance adopted by the governing body of the municipality or county, describing one or more buildings, hangars, runways, or structures whose revenues are to be pledged for the payment of the bonds, stating the total amount of revenues derived there from in the then next preceding fiscal year, determining the minimum amount of additional revenues estimated to be derived there from annually by virtue of the improvements to be financed by the issuance of the bonds, pledging all revenues to a separate and special airport revenue capital projects fund, so far as necessary to pay when due the principal and interest on the bonds and to create and maintain an additional reserve at all times equal to the maximum amount of principal and interest to become due in any subsequent fiscal year, stating the current cost of operation and maintenance of the airport during the immediately preceding fiscal year, estimating the maximum annual additional cost of the operation and maintenance in any subsequent fiscal year during the term of the bonds, and stating the total amount of the revenues received in the preceding year other than those pledged for the payment of the bonds, and the total amount possible to be raised by the levy of taxes for the operation and maintenance of the airport within the limitations prescribed by law, based on the assessed valuation of taxable property within the municipality or county for the preceding year. (SDCL 50-8-2) When an airport board has been organized in a municipality, the resolution or ordinance shall be adopted by that board, subject to approval by resolution of the governing body. (SDCL 50-8-3) No bonds may be issued unless the existing and estimated revenues pledged to the payment of the bonds are at least equal to the maximum amount of principal and interest to become due thereon in any fiscal year, and the revenues not pledged plus the taxes which may be levied within legal limitations are sufficient to pay the existing and estimated future operating expenses, all as stated in the resolution or ordinance. The past and estimated future revenues shall include all rentals of the facilities whose revenues are pledged, all other charges for the use thereof, and all profits, if any, from the sale of commodities or services on or about the premises whose revenues are pledged, deducting from the gross sale price only the actual cost necessarily incurred of acquiring the commodity or furnishing the service. (SDCL 50-8-4) The revenue bonds authorized by this chapter shall be payable solely from the revenues described in the resolution or ordinance initially adopted, except that the resolution or ordinance may also pledge therefore the revenues of any other facilities to be acquired in future, and may authorize or may limit the issuance of additional bonds, payable from the same revenues on a parity with the original issue or subordinate thereto, upon conditions as may be prescribed. The bonds shall be payable solely from the revenues defined and pledged in the initial resolution, and no other funds or revenues or property of the municipality or county may be used to pay the bonds or interest thereon except as may be otherwise required by law or by the Constitution. (SDCL 50-8-8) The pledge of revenues made by the initial resolution shall be sufficient to pay the interest and the principal thereof when due, and shall be irrepealable until the bonds and the interest are paid, and that the revenues not pledged and the taxes levied by the municipality or county within the limitations prescribed by law for airport purposes shall be sufficient to provide for payment of all costs necessarily incurred in the operation, administration and maintenance of the airport and the continued ownership and operation of the facilities whose revenues

are pledged, until the bonds and interest are fully paid. Accordingly, the taxing powers of any municipality or county issuing such bonds shall never be used, directly or indirectly, for the payment of either the principal thereof or the interest thereon or any part thereof, except as herein expressly provided. (SDCL 50-8-10)

The governing body of a municipality or county may lease such airport or landing field or any portion thereof or any building or part of any building thereon or any airport facility for operating purposes to any responsible person or corporation upon such terms and conditions for a term of not to exceed twenty-five years as the governing body may approve. Upon taking effect of any lease of the entire airport lease, no liability for the negligent maintenance or operation of said airport or landing field building and facilities shall attach to the municipality or county, respectively nor shall it be liable in any event for the negligent maintenance or operation of any building or other facility leased to an operator or erected by an operator upon a leased site. (SDCL 50-7-3)

All boards, commissions, or other agencies of the State of South Dakota having the control of and administering lands in which the title is in the State of South Dakota, or any officer of the state having the custody of any such records shall transfer to the commissioner of school and public lands all records pertaining to the same including deeds, patents, and other conveyances together with all easements or grants of any kind affecting such land. The commissioner of school and public lands shall index such lands in the platbooks of the Department of School and Public Lands according to the legal description thereof and index and file all title papers or easements heretofore or hereafter granted. (SDCL 5-1-8) Whenever a civil, state, religious, or public organization makes an application for the purchase of any common school or endowment land to be used for public purposes, not exceeding one hundred sixty acres, and files a plat and a statement of the purpose for which the land is to be used in the Office of the Commissioner of School and Public Lands, the commissioner may appraise the tract in the manner provided by law for the appraisement of school and public lands. (SDCL 5-9-34) (AGR 1959-60, pp. 352-353)

7.202 Annual Appropriations for Air Facilities Authorized

The governing body of a municipality to which this chapter is applicable having power to appropriate money therein may annually appropriate and cause to be raised by taxation in such municipality a sum sufficient to carry out the provisions of this chapter. A county shall appropriate from the county general fund for the purposes of this chapter. (SDCL 50-7-9) The governing body of any municipality or county may designate the commission as its agent to accept, receive, and receipt for federal moneys in its behalf for airport purposes, and to contract for the acquisition, construction, enlargement, improvement, maintenance, equipment, or operation of airports, or other air navigation facilities. The governing body may enter into an agreement with the commission prescribing the terms and conditions of such agency. The moneys paid over by the United States government shall be paid over to the municipality or county under such terms and conditions as may be imposed by the United States government in making such grant. (SDC 50-7-10)

7.203 Airport Operation by the County

The governing body of a municipality or county which has established an airport or landing field and acquired, leased, or set apart real property for such purpose may construct, improve, equip, maintain, and operate the same and shall have authority to lease or sublet such property for airport purposes. The expenses of such construction, improvement, equipment, maintenance, and operation shall be a municipality or county charge as the case may be. (SDCL 50-7-12) The governing body of a municipality or county which has established an airport or landing field and acquired, leased, or set apart real

property for such purpose may vest jurisdiction for the construction, improvement, equipment, maintenance, and operation thereof, in any suitable officer, board, or body of such municipality or county, and providing further a municipality is authorized to create by ordinance a board whose sole purpose shall be to improve, regulate and supervise the operation and management of air facilities. (SDCL 50-7-13)

The governing body of a municipality or county may adopt regulations and establish fees or charges for the use of such airport or landing field, or may authorize an officer, board, or body of such municipality or county having jurisdiction to adopt such regulations and establish such fees or charges, subject, however, to the approval of such governing body before they shall take effect. (SDCL 50-7-14)

7.204 Joint County and Municipal Airport

The powers granted by this chapter to counties and municipalities may be exercised jointly by the county and municipalities located in said county or abutting county, and in the case of existing airports owned by a municipality, the county in which said municipality is located, or an abutting county, may purchase from said municipality an interest therein and in case of airports operated by a county, a municipality in such county or abutting county may purchase from said county an interest therein and may appropriate money and do all other things necessary to share in the operation expense as though said airport were owned and operated solely by said county or municipality. In case of a jointly owned and operated airport the management of said airport shall be in accordance with regulations adopted by the governing boards of the county and municipality not inconsistent with other provisions of this chapter, and the governing boards of the county and municipality may by resolutions of their respective governing bodies create an airport board as provided by chapter 50-6 which said chapter by reference thereto to the extent applicable is made a part of this chapter. (SDCL 50-7-5)

7.205 State Permission Required to Accept Federal Airport Aid

No municipality or county in this state, whether acting alone or jointly with another municipality or county or with the state, may submit to the administrator of the federal aviation administration any project application under the provisions of any act of Congress which provides airport planning, construction and development funds or other funds for the expansion and improvement of the airport system as such act shall pertain to the State of South Dakota, unless the project and the project application have been first approved by the commission. No municipality or county may directly accept, receive, receipt for, or disburse any funds granted by the United States under such act, but it shall designate the commission as its agent and in behalf to accept, receive, receipt for and disburse such funds. It shall enter into an agreement with the commission prescribing the terms and conditions of such agency in accordance with federal laws, rules and regulations and applicable laws of this state. The moneys paid over by the United States government shall be retained by the state or paid over to the municipality or county under such terms and conditions as may be imposed by the United States government making such grant. Any agreements made between any of the parties or with the commission in accordance with the provisions of this section, and relating to airport planning, and made prior to July 1, 1972, are hereby validated. (SDCL 50-7-17)

7.206 Airport Authorities Act

Any subdivision or any two or more subdivisions, whether in this state or in an adjoining state, provided that at least one subdivision is in South Dakota, may by joint resolution, create a public body, corporate and politic, to be known as a regional airport authority which shall be authorized to exercise its functions upon the issuance by the secretary of state of a certificate of incorporation. (SDCL 50-6A-2)

A subdivision shall not adopt any resolution authorized by § 50-6A-2 or 50-6A-11 without a public hearing thereon. Notice thereof shall be given at least ten days prior thereto in the official newspaper of the subdivision, or if the subdivision has no official newspaper, then in a newspaper having general circulation in the subdivision. (SDCL 50-6A-3) Upon the appointment and qualification of the commissioners first appointed to a regional airport authority, they shall submit to the secretary of state a certified copy of each resolution adopted pursuant to § 50-6A-2 by the subdivisions included in the regional authority, and upon receipt thereof the secretary of state shall issue a certificate of incorporation to the regional airport authority. (SDCL 50-6A-5) A commissioner of an authority shall receive no compensation for his services, but shall be entitled to the necessary expense, including traveling expenses, incurred in the discharge of his duties. (SDCL 50-6A-10)

An authority shall have all the powers necessary or convenient to carry out the purposes of this chapter including the power to certify, annually to the governing bodies creating it, the amount of financial support requested from said governing bodies for airport purposes. Each subdivision may, if deemed necessary by the subdivision, levy the amount requested pursuant to provisions of law authorizing municipalities and other political subdivisions of this state to levy taxes for airport purposes. The levy made may not exceed the maximum levy permitted by the laws of this state for airport purposes. Each subdivision shall collect the taxes levied for an airport authority in the same manner as other taxes are levied and collected and make payment to the airport authority. (SDCL 50-6A-23)

In counties or municipalities supporting airport authorities, a levy in addition to all other levies permitted by law, not to exceed two dollars and forty cents per thousand dollars of taxable valuation of property in such county or municipality, may be made for such purposes, but such county levy may not apply to any municipality levying hereunder. (SDCL 50-6A-24)

The proceeds of taxes for support of an airport authority when and as paid to the airport authority shall be deposited in a special account or accounts in which other revenues of the authority are deposited and may be expended by the authority as provided for in this chapter. (SDCL 50-6A-25)

An authority shall have the power to borrow money for any of its corporate purposes and issue its bonds therefore, including refunding bonds, in such form and upon such terms as it may determine, payable out of any revenues of the authority, including grants or contributions from the federal government or other sources, which bonds may be sold at not less than ninety-eight percent of par plus the interest accrued on the bonds to the date of the delivery thereof. There shall be no interest rate ceiling on those issues sold at public sale. (SDCL 50-6A-29)

Chapter 8
County Highway and Bridge System

Supervision of County Highways

8.001 Control of County Highway System

The construction, improvement, maintenance, and repair of the county highway system, except as provided for state trunk highways shall be under the supervision of the county superintendent of highways in organized counties, who shall formulate and direct the policy of the county for the construction, improvement, maintenance, and repair of the county highway system. (SDCL 31-12-5) The county highway system shall be permanently constructed and improved, and shall be maintained and repaired at the expense of the whole county, and the funds necessary therefore shall be levied and collected in the same manner as other county taxes, and it shall be the duty of the board of county commissioners to determine upon and make such levy in the manner now provided by law. (SDCL 31-12-6)

Even though the State Legislature designated certain county highways as part of the state trunk highways, the maintenance and repair of a highway remains the obligation and responsibility of the county until the state highway system undertakes to maintain, improve or keep in repair the highway concerned. (AGR 1953-54, pp. 218-219)

8.002 County highway Superintendent

The board of county commissioners at its discretion may employ a county highway superintendent, the salary and expenses to be fixed and allowed by the board of county commissioners, to be paid out of the motor vehicle fund of the county. No member of the board of county commissioners shall be appointed as county highway superintendent. The tenure of office of the county highway superintendent may be terminated at any time by resolution of the board of county commissioners upon thirty days' notice, but unless so terminated, the tenure of office shall be for two years. (SDCL 31-11-1) The county highway superintendent shall have charge of all road construction and maintenance in the county, subject to the approval of the board of county commissioners. In case of a disagreement between the county superintendent of highways and the board of county commissioners an appeal may be taken to the Transportation Commission, whose decision shall be final. (SDCL 31-11-5)

In cases where the county superintendent of highways is not an engineer he shall have power and authority with the approval of the county commissioners to employ an engineer whenever necessary to survey and to do other engineering work. (SDCL 31-11-5)

8.003 Survey of Highways Before Construction or Repair

The board of county commissioners may, if it deems it expedient, direct the county highway superintendent to make or cause to be made a survey and report upon all or parts of the county highway system for the purpose of ascertaining the condition of the parts thereof and of obtaining a record of existing structures and their condition. (SDCL 31-12-8) Before any permanent improvement is undertaken upon the county highway system, the county highway superintendent shall, under the general direction of the board of county commissioners where deemed necessary, make or have made a

survey and prepare or have prepared plans, specifications, and estimates for the improvement. Such survey, plans, specifications, and estimates shall be prepared according to standards to be prescribed by the Transportation Commission, and shall be on the basis and with the object in view of permanent improvement, each as to bridge, culvert, tile, and road work. (SDCL 31-12-9)

It shall not be necessary for plans and specifications to be prepared for the construction of temporary grading, repair work, or turnpiking operations with blade graders on the county highway system, and the same may be done by day labor or private contract made by the board of county commissioners. Such work shall be supervised by the county highway superintendent who shall certify to all claims for such work. (SDCL 31-12-23)

Terms used in this chapter mean:(1) "Construction," and "constructed," in addition to their ordinary meaning, repair and alteration;(2) "Public corporation," the state and all counties, municipalities, public school corporations and all officers, boards or commissions empowered by law to enter into contracts for the construction of public improvements;(3) "Public improvement," is one the cost of which is payable from taxes or other funds under the control of the public corporation and also local improvements for which special assessments are to be levied;(4) "Surety," a bond or undertaking executed by a surety company authorized to do business in the State of South Dakota and countersigned by an agent of the company resident in the State of South Dakota, but nothing in this subdivision requires countersignature of a bid bond;(5) "Acceptance," the formal resolution of a public corporation authorizing the execution of a design-build contract;(6) "Design-build contract," a contract between a public corporation and a design-builder to furnish the architecture, engineering, and related services as required, and the labor, materials, and other construction services for a public improvement. A design-build contract may be conditioned upon future refinements in scope and price, and may permit the public corporation to make changes in the scope of the project without invalidating the design-build contract;(7) "Design-builder," the person that proposes to design and construct a public improvement covered by the procedures of this chapter;(8) "Performance criteria," the requirements for the public improvement, including as appropriate, capacity, durability, production standards, ingress and egress requirements, building code requirements, or other criteria for the intended use of the public improvement, expressed in performance-oriented specifications or drawings suitable to allow the design-builder to make a proposal;(9) "Performance criteria developer," the person and the person's subcontractors retained by the public corporation to develop performance criteria;(10) "Proposal," an offer to enter into a design-build contract;(11) "Request for proposals," the document or publication whereby a public corporation solicits proposals for a design-build contract; and(12) "Request for qualifications," the document or publication whereby a public corporation solicits interested design-builders to prequalify for a design-build contract. (SDCL 5-18-1) (AGR 1953-54, pp. 92-93)

8.004 County Aid Roads in Townships

The board of county commissioners of each county is hereby empowered to designate in its discretion township roads or roads in unorganized townships within the county, as it may deem advisable and in the public interest as "county aid roads," and to expend any funds available from the county highway funds for laying out, constructing, graveling, and maintaining such township roads or roads in unorganized townships so designated as "county aid roads." (SDCL 31-13-12) The board of supervisors of any township may jointly contract with the county of which such township is a part, and also with any municipality within or adjoining such township, for the laying out, construction, graveling, hard surfacing, or maintenance of designated township roads. The agreement shall designate the governing board to be charged with contracting for performance of the work, provide for supervision of

the work and allocate the costs between the units of government participating. (SDCL 13-13-13) Townships, however, are not authorized to contribute toward the improvement of county highways. (AGR 1953-54, p. 108)

8.005 County control of Secondary Roads

When ten or more freehold voters from each county commissioner district in the county shall with the permission of the county commissioners join in a petition to the county commissioners of a county asking such board to construct and maintain all secondary roads in the several townships of the county, whether organized or unorganized townships, such petition shall be filed with the county auditor in said county and such board shall order an election for the purpose of determining by a vote of the voters of such county, or may submit at any general election, the question of such county maintaining, improving, and constructing the secondary roads in the several townships of said county, organized or unorganized. (SDCL 31-12-28) The question is submitted so that it may be voted on by all the electors of the county (AGR 1947-48, p. 235) If a majority of the voters are in favor of the proposition, the commissioners are to take the same powers and authority with respect to the secondary roads which are conferred upon them with respect to the county highway system. All township highway funds are then turned over to the county treasurer to be put in the special township motor vehicle fund 9AGR 1953-54, pp. 6-8). If a township should fail to make a levy for highway purposes, the work done on the secondary roads within that township would probably be correspondingly less (AGR 1947-48, p. 235) Moreover; counties may purchase road machinery to maintain township roads with funds accumulated for township purposes by assessing each township its proportionate share of the cost. (AGR 1953-54, pp. 6-8)

31-12-24 Supervision of maintenance work by superintendent--Payments from road and bridge fund.
31-12-25 Establishment of witness corners required--Violation as petty offense.
31-12-26 Responsibility for secondary roads in unorganized territory.
31-12-27 Tax levy for secondary roads in unorganized territory.
31-12-27.1 Contracts with residents for county road construction and repair--Petition--Work performed by highway department or private contract--Payment.
31-12-28 Secondary county road construction by county--Petition--Election.
31-12-29 Notice and manner of election.
31-12-30 Ballot for election--Form.
31-12-31 Powers and authority of commissioners if county road proposition passes.
31-12-32 County funds available for secondary roads--Tax levy.
31-12-33 Township funds available for secondary roads.
31-12-34 Secondary township highway construction by county--Petition--Election.
31-12-35 Notice and manner of election--Ballot.
31-12-36 Powers and authority of commissioners if township highway proposition passes.
31-12-37 Return to township control--Petition and election.

A county may enter into road construction contracts with the townships without open bidding and without publication in local newspapers in competition with private contractors, but the conditions enumerated by law must be adhered to. If outside contracting is necessary to complete the project agreed upon, rather than by day labor, then the conditions are limiting factors. (AGR 1959-60, p. 368)

For the purposes described in § 31-12-36 there shall be available to the county the county road and bridge fund, the special highway fund as established by § 32-11-3, and revenue from other sources available to the county for construction, maintenance, and improvement of the secondary highways within such township, together with the proceeds of a tax which may annually be caused to be levied by

the county commissioners in such township in such an amount to defray the cost of maintaining, constructing, and improving highways in the township not exceeding statutory limitations for highway purposes. (SDCL 31-12-38) All highway funds and moneys belonging to, in the possession of any townships, or in the possession of the county and belonging to any such township, whose secondary highways are placed under the jurisdiction of the county commissioners as provided in §§ 31-12-34 to 31-12-36, inclusive, shall be expendable for the purpose of constructing, improving, and maintaining said secondary highways in said township, together with other funds which may accrue to said township for road purposes, all of which township funds shall be paid over to the county treasurer of such county by the treasurer of such township and covered into the special township motor vehicle fund. (SDCL 31-12-39) Counties are authorized to contract with municipalities within their respective boundaries for the maintenance of public streets and alleys or any portion thereof within said municipalities. Whenever it shall be made to appear to the board of county commissioners of any county by a resolution of any municipality within the county, duly adopted, copy of which resolution shall be filed in the office of the county auditor of the county of which such municipality is located that it will be to the best interests of such municipality and in the public interest that the municipality enter into an agreement in writing with the board of county commissioners of such county for the maintenance of any public street or alley or any portion thereof, the board of county commissioners may, in its discretion, enter into an agreement in writing with the governing body of such municipality to maintain any such street or alley, to be specifically designated, at and for a price to be paid to the county to be expressed in the agreement for such maintenance. If it shall appear to the board of county commissioners that it will be to the public interest to enter into such an agreement, it shall be lawful for it so to do, and such county, by and through its highway department and with the personnel and equipment thereof, perform, or cause to be performed, for such municipality such maintenance specified in said agreement and such maintenance to be done under the supervision and control of the county highway superintendent. The prices specified in said contract shall be paid to the said county by the municipality upon estimates certified to by the county highway superintendent in the same manner as other obligations of the municipality are paid. (SDCL 31-12-41)

All culverts constructed on the county highway system shall have a clear roadway of not less than twenty-four feet. (SDCL 31-12-18) Township supervisors have no authority to expend the township's special highway fund for the graveling of roads on the county highway system (AGR 1953-54, p. 389)

8.006 Location of Highways by County Commissioners

Whenever any road shall have been used, worked, and kept in repair as a public highway continuously for twenty years, the same shall be deemed to have been legally located or dedicated to the public, and shall be and remain a public highway until changed or vacated in some manner provided by law. Such highway shall be sixty-six feet wide and shall be taken equally from each side of the roadbed center line. Nothing herein contained may prevent the highway authority charged with the construction, reconstruction, or repair of any public highway from purchasing or condemning right-of-way for widening the highway to more than sixty-six feet or from purchasing or condemning more right-of-way on one side of the roadbed center line than on the other, provided they deem it necessary so to do in order to provide a better highway, to avoid destruction of trees or valuable buildings or to avoid unsuitable terrain. (SDCL 31-3-1) Upon receiving the petition of two or more voters of an organized civil township or of the number of voters equal to or greater than one percent of the ballots cast for the last gubernatorial election in the affected county, the board of supervisors of the township or the board of county commissioners wherein the highway is located or is proposed to be located may, except as

provided in §§ 31-3-12 and 31-3-44, vacate, change, or locate any highway located or to be used within the township or county, if the public interest will be better served by the proposed vacating, changing, or locating of the highway. The petition of the voters shall set forth the beginning, course, and termination of the highway proposed to be located, changed, or vacated, together with the names of the owners of the land through which the highway may pass. (SDCL 31-3-6) In case of the filing of a petition described in § 31-3-6, the board shall, after giving notice of a public hearing, hold a public hearing called for the purpose of receiving public testimony about the action proposed by the petition. The board shall give notice of the public hearing by publication in the official newspaper of said township, if any, otherwise in the nearest legal newspaper of said county, once each week for at least two consecutive weeks. The notice of the public hearing shall state the purpose, date, time, and location of the hearing and a legal description of the location of the highway and the action proposed by the petition and how information, opinions, and arguments may be presented by any person unable to attend the hearing. The board shall, by resolution, determine whether the public interest will be better served by such proposed vacating, changing, or locating of the highway in question, and upon resolution in the affirmative, shall make its order that such highway be vacated, changed, or located. (SDCL 31-3-7)

If at the meeting of the board of county commissioners at which the report of the committee appointed to examine such highway is presented, any person over whose land such highway passes shall remonstrate against granting the prayer of the petition, setting forth in writing that he is damaged by the location, change, or vacation of such highway in a stated sum, to the truth of which he takes and subscribes an oath, such board shall determine from the face of the report and the evidence before it the amount of damages sustained and whether the damages so assessed are greater than the utility of the proposed highway or change, and if it deems the highway of sufficient advantage to the public to warrant the paying of the damages assessed, the board shall declare such highway located, changed, or vacated and all damages declared assessed shall be paid by the county; but if it shall determine that the damages assessed are greater than the advantages of the proposed location, change, or vacation, it shall order the petition dismissed. (SDCL 31-3-30)

Where such public highway proposed to be located is not more than one mile in length, the board of county commissioners shall in all things proceed as provided in §§ 31-3-22 to 31-3-37, inclusive, although the petition for such highway may be by but one or more petitioners and the board of county commissioners shall require the petitioner or petitioners for such highway to pay the damages assessed for the location thereof. (31-3-23)

Public highways may be located without the appointment of viewers, provided the written consent of all the owners of the land to be used for that purpose be first filed in the county auditor's office, and if it is shown to the satisfaction of the board of county commissioners that the proposed highway is of sufficient public importance to be opened and worked by the public, it shall make an order locating the same, from which time only shall it be regarded as a public highway. (SDCL 31-3-36) If a survey of the highway mentioned in § 31-3-36 is necessary, the board of county commissioners before ordering such survey shall require the persons asking for the location of such highway to pay the expenses of such survey. (SDCL 31-3-37)

The legally constituted authorities of any county, township, or municipality in the State of South Dakota are hereby authorized and empowered to enter into contracts with the United States of America fixing the terms and conditions under which the part of any highway or system of highways under the control, jurisdiction, and supervision of any such county, township, or municipality in this state which it is found necessary to relocate, rearrange, or alter in order to facilitate the construction of the dams and reservoirs, within the State of South Dakota, by the United States government in the development of the Missouri River flood control projects will be made. Provided that any such contract entered into shall provide for reimbursement of any such county, township or municipality by the United States of

America for all works performed and materials furnished under said contract by any county, township, or municipality. (SDCL 31-3-41) No changes in the location of any highway or part of a highway or system of highways as contemplated, shall be entered into pursuant to § 31-3-41 until notice of the proposed changes of such highways shall have been published in the legal newspaper of the county in which said proposed changes are to be made. Said notice shall be published for two successive weeks, once each week, and not less than ten days prior to the adoption of any such proposed changes and which said notice shall state the time and place when and where any person interested may appear and be heard upon any objections they may wish to assert in opposition to any such proposed changes in relocation or establishing of any highways or parts of highways. (SDCL 31-3-43)

With regard to the contracts by the subdivisions of government with the federal government for the construction of relocated highways which have been taken over by the Missouri river Flood Control Project, the several subdivisions must each give the notice required. Moreover, the county may not contract with the by the laws of this state, including the provision that the contracts be let on competitive bids. If the county highway budget is inadequate to take care of the expense involved in making these improvements, additional funds would have to be budgeted. (AGR 1953-54, p. 77)

8.007 Approval of State Transportation Committee

Except for minimum maintenance roads established pursuant to § 31-12-46, no county highway system may be changed, altered, or modified except by authority of and in accordance with a written executive order of the Department of Transportation. Any such change shall be shown on the map of the county highway system in the office of the county auditor and on such map in the Department of Transportation. (SDCL 31-12-2) Every section line road is considered public road mileage of the county. (AGR 1945-46, p. 38) (AGR 1957-58, pp. 79-81)

The department shall, at the request of any county, give advice regarding difficult construction questions, pass upon the feasibility of any plan of road construction, improvement, and repair, and in general render any reasonable service to aid the county in the construction, maintenance, or repair of its county highway system. (SDCL 31-2-22) Note, that a change in the county highway system must follow the rules and regulations adopted by the department of transportation.

8.008 Private Roads

Any person may have a private road laid out, changed, or vacated upon presenting a petition to the board of county commissioners of the county in which such petitioner resides under regulations provided for roads running through one county only. Such board may order such private road to be located, changed, or vacated without any view if there be no remonstrance against such petition, and the petitioner shall open and keep in repair such road at his own expense. (SDCL 31-3-38) No private road must be constructed or repaired by using or employing county highway equipment. (AGR 1953-54, pp.51-52)

If no private person sells crushed gravel within a county, twenty residents of such county may petition the board of county commissioners to hold a public hearing on the sale of gravel by the county. If the board of county commissioners receives such a petition, they shall schedule a public hearing to be held within thirty days. The board of county commissioners shall publish a notice of the hearing once a week for two successive weeks in the legal newspapers of the county.

At the hearing, the commissioners shall take public testimony on the question of whether the county should sell gravel. If the board determines that it is in the best interests of the residents of the county to sell gravel, the board may authorize the sale of gravel by the county to the residents of such county for not less than the county's cost for the gravel. No person who purchases the gravel from a

county may in turn sell it. The board of county commissioners will hold an annual public hearing on the continuance of the sale of gravel by the county and the hearing shall be published pursuant to section 2 of SDCL 7-18-26.

8.009 County Highways on State, County or city Boundary Lines

If any portion of a county highway system shall lie on a state line, the Department of Transportation is authorized to confer with the authorities of the bordering state and to agree upon the assignment of portions of such highway to the counties of the two states for construction, repair, and maintenance, and any such agreement and assignment made before July 1, 1939, is hereby confirmed. (SDCL 31-17-1) A city and county may join together in constructing and contributing financially toward road construction so long as the work is done on the basis that each portion is each subdivision specific project. 9AGR 1951-52, pp. 320-321)

8.010 Secondary Highways on Township Boundary lines

The secondary highways on county lines shall be assigned to the charge of the boards of supervisors of organized civil townships or the board of county commissioners in the case of unorganized territory as may be agreed upon by the respective boards of county commissioners and in case of disagreement, as determined by the Transportation Commission. (SDCL 31-17-5) The secondary highways wholly within one county on lines between organized townships shall be assigned to the charge of such townships as the respective boards of supervisors may agree, and, in case of disagreement, as the board of county commissioners shall determine; and those on the line between organized civil townships and unorganized territory as the board of commissioners shall determine. (SDCL 31-17-6) Commission on division of responsibility. Whenever boards of county commissioners fail to perform the duty prescribed by 31-17-2, or in case of disagreement by such boards, an appeal may be made to the Transportation Commission by one of them, and the commission shall notify the county auditors of the counties concerned that the commission will, on a day not less than ten days thereafter, at a named time and place within one of such counties, hold a hearing to determine all matters involved. At such hearing the commission shall fully investigate all questions involved, and shall, as soon as practicable, certify its decision to the different boards, which decision shall be final, and such boards must forthwith comply. (SDCL 31-17-3)

8.011 Connections Between Roads Crossing County Lines

Subject to approval of the Department of Transportation, boards of county commissioners of adjoining counties shall make proper connections between roads which cross county lines and which afford continuous routes of travel; adopt plans and specifications for highway construction, reconstruction, and repairs upon highways along and across county boundary lines, and make an equitable division between such counties of the cost and work of execution of such plans and specifications; such division, in case of disagreement, to be made by the Transportation Commission. (SDCL 31-17-2)

A county may not spend money on a road between two counties when the road is not a part of the county highway system. (AGR 1955-56, pp. 153-154)

8.012 Restrictions of Use of County Highways

Local authorities, including road districts, may by ordinance or resolution prohibit the operation of vehicles upon any highway or impose restrictions as to the weight of vehicles allowed. Such prohibitions or restrictions apply only to vehicles to be operated upon any highway under the jurisdiction of and for

the maintenance of which such local authorities are responsible and only if the highway by reason of physical condition, rain, snow, or other climatic conditions will be seriously damaged or destroyed unless the use of vehicles on the highway is prohibited or the permissible weights of the vehicles are reduced. Any local authority enacting any such ordinance or resolution shall erect and maintain or cause to be erected and maintained signs designating the provisions of the ordinance or resolution at each end of that portion of any highway affected by the ordinance or resolution. The ordinance or resolution is not valid unless such signs are erected and maintained. (SDCL 31-14-6) Local authorities, including road districts, may by ordinance or resolution prohibit the operation of trucks or other commercial vehicles or impose limitations as to the weights of such vehicles on designated highways. The prohibitions and limitations shall be designated by appropriate signs placed on such highways. (SDCL 32-14-7)

8.013 Highway Railroad Crossings

The expense of eliminating railroad crossings shall be divided between the railroad company and the state or counties, as the case may be, on the basis of the benefits received by each party. (SDCL 31-27-5)

The expense of repairing, replacing, and maintaining all "railroad and highway crossings," as defined by § 31-27-21, and all protection and safety devices shall be determined by the Department of Transportation on the basis of the proportion of benefit, if any, derived by railroad companies, and the benefit, if any, to the public authority at interest. (SDCL 31-27-19.1)

8.014 Authority to Designate Stop intersections

The Department of Transportation and boards of county commissioners are authorized to designate certain state and county highways, or portions thereof, as preferential or arterial highways and the traffic upon any such highway so designated shall have the right-of-way. Failure to comply with the provisions of this section is a Class 2 misdemeanor. (SDCL 31-28-16) Except within the limits of a municipality, the Department of Transportation and county commissioners may designate any hazardous intersection as a stop intersection, and designate any railroad crossing as a stop crossing. Such intersections and railroad crossings shall be designated by placing a stop sign at the point of stop, such sign to be preceded by a warning sign so as to give warning of stop. Failure to stop at the point of stop of such intersections and railroad crossings is a Class 2 misdemeanor. (SDCL 31-28-17)

8.015 Access to Highway from Adjoining Property

In the construction, improvement, and repair of any public highway by the state, or by any county or township, where the work of construction or repair shall be of such character as to leave a ditch or elevation along the roadside and thereby to deprive any abutting landowner of easy and convenient access from his land to such highway, it shall be the duty of the highway authorities, except as provided by chapters 31-7 and 31-8, to provide the owner of such abutting tract or farm, as well as each church, school, park, playground, or other public building or ground, with one point of easy and convenient access to a public highway by constructing at the public expense, such grades, approaches, bridges, culverts, or other structures as may be necessary for that purpose. The provision herein contained authorizing construction of entrances at the expense of the authority having charge of the maintenance shall only apply to new construction. (SDCL 31-24-1) Approaches required by § 31-24-1 shall be built by the proper authorities constructing the highway in all cases where the building of such approach becomes necessary as a result of highway construction, and such approaches shall be built by the county, or township charged with the maintenance of such highway in other cases. In all cases any such structure, culvert, bridge, or approach so constructed shall thereafter be maintained and kept in repair by the highway authorities who are charged with the maintenance of such highway. (SDCL 31-24-2) No connecting structure or approach described by § 31-24-1 shall be constructed by the highway authorities upon private property nor beyond the right-of-way line. (SDCL 31-24-5)

The owner as a matter of right, shall not be entitled under § 31-24-1 to the construction of more than one farm entrance on any one tract or parcel of land at the expense of the public authority whose duty it is to maintain the highway; but such owner may at his own expense upon making application to and receiving written consent of the said authority construct other entrances provided same are constructed at the place and in the manner designated by said authority in its written permit. (SDCL 31-24-3)

Every owner of an isolated tract of land containing at least ten acres not touched by a passable public highway or smaller tract of land containing at least five acres used or intended to be used in good faith in whole or in part for residential purposes is entitled to an easement or right-of-way across adjacent lands to reach a public highway, which easement or right-of-way may be secured as provided in this chapter. An isolated tract is further defined as an area which is either inaccessible by motor vehicle because of natural barriers from all other land owned by the owner of the isolated tract or is such an area which is not touched by a passable public highway, which is in use or reasonably usable for motor vehicles. A tract of land adjoining a section line right-of-way for at least sixty-six feet is not an isolated tract if a passable road can be built within the adjoining section line to connect to a passable public highway. (SDCL 31-22-1) If the owner of such an isolated tract is unable to agree with the owner of surrounding lands for purchase of a right-of-way from such isolated tract of land to a public highway, he may apply to the board of county commissioners for relief, making his application in writing and describing the isolated tract and the surrounding land over which a right-of-way is desired. The county commissioners shall thereupon cause to be served upon the owner or owners of such surrounding land a notice in writing of a time when such board will visit such land and lay out one right-of-way across such surrounding land, and assess the damages therefore, which notice shall be served at least five days prior to the date set for such visit and appraisal. (SDCL 31-22-2)

8.016 Cattle Ways and Fences Across Highways

Upon application to the Department of Transportation, board of county commissioners, or board of township supervisors, by any person for permission to construct a cattle way across or under any public road, such highway authority maintaining the highway described in the application may in its discretion grant the application upon condition that such way shall be constructed in all particulars as directed by such department or board and shall not interfere with public travel. The grade of the road over the cattle way shall not at any point exceed one foot in ten feet. Applicant must construct and agree to keep the same in repair at his own expense. (SDCL 31-25-2) If any person on whose land a cattle way is constructed pursuant to § 31-25-2 fails to keep the same in repair, the proper board shall cause the same to be repaired and charge the cost thereof to the owner of such cattle way and such cost shall be recovered by a civil action by the state, county, or township against the owner of such land and cattle way. (SDCL 31-25-3)

The construction and maintenance of livestock guards over or across county or secondary highways so constructed that automobiles and trucks may pass over the same and which will prevent the passage of livestock across such livestock guards is hereby authorized. The construction and maintenance of such livestock guards shall not be considered as creating a barrier or obstruction on such highways. (SDCL 31-25-4)

8.017 Responsibility for Repairing Highways

If any highway, culvert, or bridge is damaged by flood, fire or other cause, to the extent that it endangers the safety of public travel, the governing body responsible for the maintenance of such highway, culvert, or bridge, shall within forty-eight hours of receiving notice of such danger, erect guards over such defect or across such highway of sufficient height, width, and strength to guard the public from accident or injury and shall repair the damage or provide an alternative means of crossing within a reasonable time after receiving notice of the danger. The governing body shall erect a similar guard across any abandoned public highway, culvert, or bridge. Any officer who violates any of the provisions of this section commits a petty offense. (SDCL 31-32-10)

The county is also liable for damages to persons injured by reason of negligent maintenance and repair on all highways in the county highway system and all secondary highways outside of the corporate limits of cities, organized towns and organized civil townships. (AGR 1947-48, p. 358)

The county board has authority to use county highway funds for construction, improvement and maintenance of portions of the county highway system within the limits of municipalities. The municipality is not required to contribute to the support of the county highway within its boundaries. (AGR 1959-60, pp. 132-133)

Although a highway is highly beneficial to a county, the county board may not pay for the removal of poles on a right-of-way when such right-of-way is not part of the county highway system. (AGR 1955-56, p. 35-43)

8.018 Snow Removal

The board of county commissioners may establish a county snow removal and special emergency reserve fund by the levy of a tax up to but not exceeding one dollar and twenty cents per thousand dollars of taxable valuation within the county. The tax levy authorized by this section is in addition to all other county tax levies. All money collected and received under the provisions of this tax levy shall be remitted at the times and in the manner required by the laws of this state relating to counties. (SDCL 34-5-2) The county snow removal and special emergency reserve fund after the creation thereof shall be used for the following purposes only:(1) Snow removal operations on county roads;(2) Repair of damages to county roads and bridges directly resulting from or caused only by melting snow;(3) Purchase of equipment for such snow removal and repairs therefore;(4) Purchase of snow fencing to prevent accumulation of snow;(5) To mow and remove grass and weeds along the highway to prevent the accumulation of snow;(6) To meet emergency requirements for the public health and safety in the time of disaster and emergency when such requirements may not be made by general or other special appropriations;(7) To repay emergency aid grants from the state emergency fund under such conditions as may be provided by law. (SDCL 34-5-3) The board of county commissioners with the county highway superintendent shall be the sole judges as to the necessity, need, and emergencies for snow removal operations and repairs, and shall exercise full discretion with decisions relative thereto. To expend money from said fund as otherwise provided in 34-5-3, the Governor or the board of county commissioners by a resolution duly adopted must declare that a time of emergency and disaster exists. (SDCL 34-5-4) Any unexpended balance remaining in the county snow removal and special emergency fund at the end of the fiscal year shall be allowed to accumulate as a reserve fund and available for future use as set forth in § 34-5-3. No part of the fund created under § 34-5-2 shall revert to the general funds of the county nor shall any of said fund be used for any other purposes. (SDCL 34-5-7) It was the opinion of the attorney general that a county is not subject to a recovery of damages for failure to remove snow from its highways. (AGR 1947-48, pp. 233-234)

The intent of §§ 31-13-22 to 31-13-28, inclusive, is for the accumulation and continuation of a sufficient fund for the use of the respective townships so as to permit and make possible in any year the efficient and immediate snow removal on township roads and for repairs thereon caused by melting snow. (SDCL 31-13-23)

The county highway system as heretofore designated and established in each organized county of the state is hereby perpetuated. (SDCL 31-12-1) (AGR 1957-58, pp. 74-75)

The snow removal fund is a special fund established for a specialized purpose. The fund is “earmarked” for the purposes outlined by statute. There is no authority to transfer monies from the fund to another fund. (AGR 1957-58, p. 156)

Money from the county snow removal fund may not be used in conjunction with regular highway funds in purchasing highway equipment which will be used partially for snow removal. The purpose of the snow removal fund is specific and is only for snow removal operations. (AGR 1959-60, p. 191)

The board of township supervisors may establish a township snow removal reserve fund by the levy of a tax up to but not exceeding sixty cents per thousand dollars of taxable valuation within the township, and which levy hereby authorized shall be in addition to all other township tax levies.

The costs of snow removal from secondary roads may not be charged to the county show removal fund since the expenditures from such funds are limited to county roads. (SDCL 34-5-3; AGR 1959-60, pp. 260-261)

After establishment of a township snow removal reserve fund, the board of township supervisors is hereby authorized to contract for the removal of snow on township roads, to purchase equipment for the removal of snow or repair the same, and to repair damages to township roads resulting from or caused by melting snow. (SDCL 31-13-26) Contracts pursuant to § 31-13-26 are authorized without advertising for bids if the total cost in a winter's season will not exceed thirty-five hundred dollars. If the cost will be less than thirty-five hundred dollars, the township supervisors may make contracts with any person, firm, or corporation, including any county, for the removal of snow on its roads, or repair of such roads damaged from or caused by melting snow, either at an hourly or day rate. If it is anticipated that the cost in any one winter would exceed that sum, the snow removal or road repair shall be done by bids as provided by law. In case of such road damage, the work may be undertaken on bids as above specified, or upon an hourly or day rate for such work. (SDCL 31-13-27)

8.019 Maintenance of Streets in a Municipality

Counties are authorized to contract with municipalities within their respective boundaries for the maintenance of public streets and alleys or any portion thereof within said municipalities. Whenever it shall be made to appear to the board of county commissioners of any county by a resolution of any municipality within the county, duly adopted, copy of which resolution shall be filed in the office of the county auditor of the county of which such municipality is located that it will be to the best interests of such municipality and in the public interest that the municipality enter into an agreement in writing with the board of county commissioners of such county for the maintenance of any public street or alley or any portion thereof, the board of county commissioners may, in its discretion, enter into an agreement in writing with the governing body of such municipality to maintain any such street or alley, to be specifically designated, at and for a price to be paid to the county to be expressed in the agreement for such maintenance. If it shall appear to the board of county commissioners that it will be to the public interest to enter into such an agreement, it shall be lawful for it so to do, and such county, by and through its highway department and with the personnel and equipment thereof, perform, or cause to be performed, for such municipality such maintenance specified in said agreement and such maintenance to be done under the supervision and control of the county highway superintendent. The prices specified in said contract shall be paid to the said county by the municipality upon estimates certified to by the county highway superintendent in the same manner as other obligations of the municipality are paid. (SDCL 31-12-41)

The county commissioners have authority to use county highway funds for construction, improvement or maintenance of portions of the county highway system within the limits of municipalities. In this instance the municipality is not required to contribute to the support of the county highway within its boundaries. (AGR 1959-60, pp. 132-133)

8.020 Drainage of County Highways

Whenever any officer or person having charge of any road shall file with the chairman of the township board of supervisors or board of county commissioners having jurisdiction of such road, his affidavit stating:(1) That such road runs into or through any swamp, bog, or meadow, or other lowland;(2) That it is necessary or expedient that a ditch should be opened through land belonging to any person;(3) The probable length of such ditch and the width and depth of the same as near as possible, the point at which it is to commence, its general course, and the point near which it is to terminate;(4) The names of persons owning the land, if known;(5) A description of the land over which such ditch must pass; and(6) That the road at that point cannot be made passable without extraordinary expense unless such ditch is laid out and opened; it shall be the duty of the chairman of such board immediately to make out a notice and fix therein a time not less than six nor more than sixty days from the date thereof when the board of supervisors or board of county commissioners will meet at the place described in such affidavit and personally examine the premises.(SDCL 31-21-1) The person serving notice pursuant to § 31-21-3 shall make return thereon to the township clerk or county auditor stating the facts, and if it shall appear from such return that the owner of any such land does not reside in the county and that no occupant resides thereon, such clerk or auditor shall order the publication of the notice once each week for at least two successive weeks in a newspaper printed and published in the county, or if there be no paper printed and published in the county he shall post or cause the notice to be posted in three of the most public places in the county for three weeks prior to the meeting of the township supervisors or county commissioners, and such publication shall be considered as sufficient notice to all parties. (SDCL 31-21-4)

At the time specified in the notice required by § 31-21-1 the township supervisors or county commissioners shall proceed to examine the road and premises over which such ditch must pass and hear any reasons for or against laying out the same, and shall decide upon the application as they deem proper, and shall assess the amount of damages which in their judgment will be an equitable compensation to the owner of any land for the opening of such ditch through his land. (SDCL 31-21-5) In all cases under this chapter the township board of supervisors or board of county commissioners shall estimate the advantage and benefits the laying out and opening of such ditch will confer upon the owner of any land through which such ditch may run, as well as the disadvantages. The damages sustained by reason of laying out and opening such ditch may be ascertained by the agreement of the owner and the township supervisors or county commissioners, in which case every agreement and release shall be in writing and filed in the office of the township clerk or county auditor and shall forever preclude such owner from all further claims for damages. (SDCL 31-21-6) If after taking all the circumstances into consideration the township supervisors or county commissioners shall be satisfied that the opening of a ditch under this chapter is necessary or advantageous to the public interest, they shall cause the same to be laid out and opened and shall give such directions in the matter as shall be necessary for the effectual draining of such swamp, pond, bog, or lowland, and shall file a statement in writing of all their doings including the amount of damages allowed, in the office of the township clerk or county auditor who shall copy the same into a book to be kept by him especially for that purpose. (SDCL 31-21-7) When the amount of damages or compensation to be paid to any one or more of the owners of land taken for any ditch shall have been finally determined by proceedings under the provisions of this chapter the board of township supervisors or county commissioners, as the case may be, shall pay the same before the opening of such ditch. (SDCL 31-21-8) Any person through whose land any ditch described in § 31-21-7 shall pass may appeal from the decision of the supervisors or county commissioners to the circuit court for the county in which the premises are situated within the time and in the manner provided for other appeals from decisions of the board of county commissioners, and the proceedings upon such appeal shall be the same as upon other appeals from such board. (SDCL 31-21-9) If the order and proceeding under this chapter be not appealed from within ten days from the filing

thereof as provided in § 31-21-7, such judgment, order, and finding shall be final, and the officer or person in charge of such road may proceed to open the ditch in accordance with the directions and under the instructions of the board of township supervisors or county commissioners, as the case may be. Any such ditch shall be laid out upon the line that the owner of the land over which it is to pass may desire whenever it can be done without extra cost. (SDCL 31-21-10)

8.021 Transmission Lines Over Highways

The owners of any telecommunications facilities operated in this state are granted the right-of-way over or under lands and real property belonging to the state and the right to use public grounds, streets, alleys and highways in this state, subject to the control by the proper authorities as to which grounds, streets, alleys or highways the lines run over or under, and placement of poles to support the wires. The right-of-way over or under real property in this chapter may be acquired in the same manner and by like proceedings as provided for railroad corporations. (SDCL 49-32-1) (AGR 1959-60, pp. 127-128)

Any person desiring to construct or lay a water pipeline over, across, or under public highways, except state trunk system highways, for the purpose of providing rural water service in the State of South Dakota shall make application to the board of county commissioners as is provided in this chapter. However, the application need not indicate the point or points to which the water pipeline is to be constructed nor the route thereof. Upon application, the board of county commissioners may grant countywide authorization for the construction of rural water service lines subject to the provisions of this chapter. (SDCL 31-26-25)

The board of county commissioners, upon written application designating the particular highway the use of which is desired, may grant to any person engaged in the manufacture or sale of electric light and power, or any municipality authorized by law to purchase electric current, or any person authorized by law to purchase such current from such municipality, or any person engaged in, or about to engage in, the furnishing of telephone service, the right to erect and maintain poles and wires or to bury underground cable for the purpose of conducting electricity for lighting, heating, and power purposes, together with stay wires and braces, and for the purpose of furnishing telephone service, in and along any public highway in its county for a period not to exceed twenty years, subject to the conditions set forth in this chapter and such further reasonable regulations as the Legislature may hereafter prescribe. (SDCL 31-26-1) Any applicant desiring to construct a transmission line as provided in § 31-26-1 shall file with the county auditor an application and any applicant desiring to construct a telephone line as provided in § 31-26-1 may, but shall not be required to file an application with the county auditor. (SDCL 31-26-10) (AGR 1959-60, pp. 68-69)

In the case of either a transmission line application or a telephone line application under § 31-26-1, the applicant shall state the place where the applicant's central plant is located, the point or points to which the applicant desires to transmit electricity or furnish telephone service, and the route over which the applicant desires to construct such lines or bury underground cable. The application shall state what electric, telegraph, and telephone lines are, at the time of making the application, occupying a part of the highway or highways which the proposed lines are to occupy. Any applicant who hereafter desires to construct a telephone line or bury underground cable shall state whether the applicant has obtained a certificate of convenience and necessity from the Public Utilities Commission. (SDCL 31-26-11) If the applicant in the case of a transmission application, wishes to construct lines or bury underground cable for rural electrification the applicant may state that the applicant wishes to construct lines for rural electrification throughout the county, in which event the applicant need not show the point or points to which the applicant desires to transmit electricity nor the route, and if the application is granted to such applicant for rural electrification county-wide authorization may be given to such applicant but subject to the other provisions of this chapter. For the purposes of this chapter, a line or underground cable shall be deemed "for rural electrification" if it carries at least one circuit of such voltage as is practical for and customarily used in distributing electricity to farms. (SDCL 31-26-12) The county auditor shall present an application under § 31-26-1 to the board of county commissioners within thirty days after

the filing of the same, at a regular or special meeting called for that purpose and shall give ten days' notice by mail of such application and the time and place when and where such application will be heard to all persons, firms, or corporations owning or operating electric, telephone, or telegraph lines or underground cable on any part of the highway or highways which the proposed lines may occupy. (SDCL 31-26-13) It shall be the duty of the board of county commissioners to take immediate action upon an application under § 31-26-13 at the time and place noticed for hearing thereon and final action thereon shall not be delayed for a longer period than ten days from the date of meeting set for the hearing. (SDCL 31-26-14) If the application for construction or reconstruction of an electric line is granted by the board of county commissioners, it shall be competent for such board to adjust any differences that may arise between any such applicant and any owner or owners of any electric, telephone, or telegraph line or underground cable affected by such decision, in the matter of construction or reconstruction, and such board may adjust and apportion the costs which may be occasioned in order to carry out the plans, methods, or means approved by the board as deemed necessary to avoid or minimize interference or hazard. However, if there is a dispute between two telephone companies such dispute shall be adjusted by the Public Utilities Commission. (SDCL 31-26-15) Any action of the county commissioners in the case of an application of a telephone company under § 31-26-1 shall enable the applicant to conform to and shall not be in conflict with any order of the Public Utilities Commission. (SDCL 31-26-16) Any interested party feeling aggrieved by the decision of the board of county commissioners on the matter of an application under § 31-26-1, shall have the right of appeal to the circuit court as from other decisions from such board, and on such appeal the circuit court shall hear and determine the matter de novo. The hearing of such appeal may be brought on either in vacation or term time upon ten days' notice to the applicant or appellant. (SDCL 31-26-17)

It shall be a Class 2 misdemeanor for any person, firm, association, or corporation owning or operating any telephone, telegraph, or electric line, or any part of such line in this state, to extend any telephone, telegraph, or electric wire, any part of which shall be less than eighteen feet from the ground, over or across any public highway. No such person, firm, association, or corporation shall be entitled to collect damages from any person who shall cut, break, remove, or otherwise destroy any such telephone, telegraph, or electric wire over or across a public highway if any part of the same is at any time less than eighteen feet from the ground. (SDCL 31-26-19) If the board of county commissioners has granted the right to any person to construct lines or bury underground cable for the transmission of electricity as provided in §§ 31-26-1 to 31-26-17, inclusive, and if before constructing such line the applicant desires to change the route designated in the grant, the board may change the route upon application of the person constructing the same subject to the same provisions for placing poles, fixtures, guy wires, braces, and stays or underground cable, as provided by law on original construction. (SDCL 31-26-18)

8.022 Controlled-Access Highway Facilities

For the purposes of this chapter, a controlled-access facility is defined as a highway or street especially designed for through traffic, and over, from, or to which owners or occupants of abutting land or other persons have no right or easement or only a controlled right or easement of access, light, air, or view by reason of the fact that their property abuts upon such controlled-access facility or for any other reason. (SDCL 31-8-1) The highway authorities of the state, counties, municipalities, acting alone or in cooperation with each other or with any federal, state, or local agency or any other state having authority to participate in the construction and maintenance of highways, are hereby authorized to plan, designate, establish, regulate, vacate, alter, improve, maintain, and provide controlled-access facilities for public use wherever such authority or authorities are of the opinion that traffic conditions,

present or future, will justify such special facilities, provided, that within municipalities such authority shall be subject to such municipal consent as may be provided by law. (SDCL 31-8-3) For the purposes of this chapter, the highway authorities of the state, counties, or municipalities may acquire private or public property rights for controlled-access facilities and service roads, including rights of access, air, view, and light, by gift, devise, purchase, or condemnation in the same manner as such units are now or hereafter may be authorized by law to acquire such property or property rights in connection with highways and streets within their respective jurisdictions. (SDCL 31-8-7) In connection with the development of any controlled-access facility the state, county, city, or town highway authorities are authorized to plan, designate, establish, use, regulate, alter, improve, maintain, and vacate local service roads and streets or to designate as local service roads and streets any existing road or street, and to exercise jurisdiction over service roads in the same manner as is authorized over controlled-access facilities under the terms of this chapter, if, in their opinion, such local service roads and streets are necessary or desirable. Such local service roads or streets shall be of appropriate design, and shall be separated from the controlled-access facility proper by means of all devices designated as necessary or desirable by the proper authority. (SDCL 31-8-14) It is a Class 2 misdemeanor for any person:(1) To drive a vehicle over, upon, or across any curb, central dividing section, or other separation or dividing line on controlled-access facilities;(2) To make a left turn or semicircular or U-turn except through an opening provided for that purpose in the dividing curb section, separation, or line. No such turn may be made through an opening in the dividing curb section, separation, or line which has been designated and marked for use by maintenance and authorized vehicles only. Maintenance and authorized vehicles may use such openings in dividing curb sections, separation, or lines for parking or turning. Maintenance vehicles include all vehicles used in the maintenance of the highways of this state and authorized vehicles include all law enforcement vehicles, fire vehicles, civil defense rescue vehicles, ambulances and recovery vehicles as defined by § 31-8-15.1 which are responding to a call for assistance;(3) To drive any vehicle except in the proper lane provided for that purpose and in the proper direction and to the right of the central dividing curb, separation section, or line;(4) To drive any vehicle into the controlled-access facility from a local service road except through an opening provided for that purpose in the dividing curb or dividing section or dividing line which separates such service road from the controlled-access facility proper. (SDCL 31-8-15)

The Department of Transportation with reference to state highways and local authorities with reference to highways under their jurisdiction may designate main traveled or through highways by erecting at the entrances thereto from intersecting highways stop or yield signs. All such signs shall be illuminated at night or so placed as to be illuminated by headlights of an approaching vehicle. (SDCL 32-29-2) The driver of a vehicle approaching a yield sign shall in obedience to the sign slow down to a speed reasonable for the existing conditions, or shall stop if necessary in a similar manner as provided in § 32-29-2.1, and shall yield the right-of-way to any pedestrian legally crossing the roadway on which he is driving, and to any vehicle in the intersection or approaching on another highway so closely as to constitute an immediate hazard. The driver, having so yielded, may proceed and the drivers of all other vehicles approaching the intersection shall yield to the vehicle so proceeding. A violation of this section is a Class 2 misdemeanor. However, if the driver is involved in a collision with a pedestrian in a crosswalk or a vehicle in the intersection after driving past a yield sign without stopping, the collision is prima facie evidence of his failure to yield the right-of-way. (SDCL 32-29-3)

8.023 Telephone Service

A county may pay a fee for a telephone installation when services is made available or in lieu thereof, purchase a share of stock so as to become a member of a cooperative association for the

purpose of receiving telephone service. The county board, at its option, may pay the installation fee or acquire the share of stock as the tariffs have been approved by the South Dakota public utilities commissions. (AGR 1953-54, pp. 387-388)

8.024 Transfer of Right of Way

The state, by and through the Department of Transportation may convey and transfer any highway right-of-way held by the state to a political subdivision and the political subdivisions may convey and transfer such highway rights-of-way to the state or to each other without requiring payment therefore. Each conveyance shall be made only after mutual agreement between the grantor and grantee. Each conveyance and transfer shall be held by the grantee for public highway purposes. (SDCL 31-19-63)

County Bridges and Ferries

8.101 County Bridges

The duty to construct and maintain all bridges and culverts throughout the county, except upon the state trunk highway system, is hereby imposed upon the board of county commissioners, subject to conditions relating to bridges and culverts on secondary highways in townships. (SDCL 31-14-2)

After determining the necessity for any and all bridges required by any county in the state, it shall be the duty of the board of county commissioners of such county to advise the county highway superintendent of such determination, and to require him or a registered engineer retained by the board of county commissioners for that purpose to make a survey of such bridge sites. Such survey shall consist of a profile of the proposed site, approximate location in regard to the nearest section corner, soundings for the location of footings, and an estimate of the available watershed. (SDCL 31-14-3) The profile, location, soundings, and estimated watershed provided for in § 31-14-3 may then be forwarded to the Department of Transportation together with a request for plans and specifications for such bridge or abutments, piers, or other related piece of work, or may be used by a registered engineer retained by the board of county commissioners in preparing plans and specifications for such work. Plans and specifications prepared by a registered engineer retained by the board of county commissioners shall conform to the design requirements of the American Association of State Highway Officials. Such plans and specifications, whether prepared by the department or by a registered engineer retained for that purpose, shall be forwarded to the proper county auditor who shall place them on file in his office. (SDCL 31-14-5)

Upon receipt of such plans and specifications, it shall be the duty of the county highway superintendent to make and file a detailed estimate of the cost of the bridge, abutment, pier, or other work contemplated by such plans, and file such estimate of cost with the county auditor. (SDCL 31-14-6) Upon determining the necessity of any such bridges, abutments, repairs, or approaches to bridges, the county commissioners shall immediately cause to be filed in the office of the county auditor of such county, complete plans and specifications thereof, as described in § 31-14-5 and thereafter, if such bridges, abutments, repairs, or approaches be let by contract, bids in lump sum shall be procured on each bridge or piece of work separately, except that all materials for use in constructing foundations or abutments shall be bid on per cubic yard for concrete, per foot board measure for lumber, per pound for steel, and per lineal foot for piling driven, said unit prices to be added to or deducted from the contract price, if more or less material is required in such foundation than specified in the plans and specifications. (SDCL 31-14-7) Each bid shall be made in accordance with the plans and specifications on file and shall be accompanied by a certified check, certified by a state or national bank domiciled within this state, in the sum of ten percent of the total amount of such bid. To be effectual for any purpose said bid and certified check shall be securely enclosed in a sealed envelope and deposited with the county auditor of the proper county before the hour of opening the sealed bids. (SDCL 31-14-8) Contracts shall

be awarded on each bridge or piece of work, separately, to the lowest bidder and the county commissioners shall have the right to reject any and all bids and advertise for new bids. It shall be the duty of the county commissioners of such county to cause to be published in the official papers of such county, for a period of fifteen days immediately prior to the opening of sealed bids, a brief notice to the effect that at the time and place above specified they will open all bids theretofore received for all bridge abutments and approaches or repairs to bridges required by such county during the ensuing month or longer. (SDCL 31-14-10)

Any county of this state may build its own bridges, abutments, approaches, and foundations, and make repairs to same by day labor without advertising for bids on any such piece of work. (SDCL 31-14-20)

If a township board of supervisors or county highway superintendent within this state requests of its board of county commissioners a construction or replacing in its entirety of any bridge or the placing or replacing of any culvert with an opening of sixteen square feet or more including material upon the secondary roads within such township, the board of county commissioners may cause the same to be done and the township shall reimburse the county up to and including five hundred dollars, and any cost in excess of five hundred dollars shall be paid by the county. After the placing or replacing of any culvert as provided in this section, it shall be maintained and kept clean at the expense of the township. The construction or replacing of any bridge or the placing or replacing of any culvert with an opening of less than sixteen square feet upon a secondary road within a township shall be at the total expense of the township, and it shall be maintained and kept clean at the expense of the township. (SDCL 31-14-27)

All bridges, abutments, and approaches or repairs to bridges hereafter required in any county of this state, shall be constructed in accordance with plans and specifications therefore, which shall be prepared by the Department of Transportation or a registered engineer retained by the board of county commissioners for such purpose and which shall show and describe the style and size thereof, the kind, weight, and quality of all materials to be used in their construction and the proper proportion of the ingredients for mixture and reinforcements. (SDCL 31-14-4) At the time appointed for the hearing of a petition under § 31-14-41 the board of county commissioners shall investigate the need for such bridge and, finding the same to be demanded for the accommodation of the traveling public, shall by resolution duly entered upon the minutes of such board appropriate toward the building of such bridge, from the county treasury, a sum not exceeding one-half of the estimated cost of such bridge, to be paid as provided in § 31-14-43. Such appropriation shall be conditioned upon a sufficient bond or guaranty of the remaining one-half or more, as the case may be, of the costs of such bridge. But the consent of the general government to span such river must first be obtained. (SDCL 31-14-42)

After determining the necessity for any and all bridges required by any county in the state, it shall be the duty of the board of county commissioners of such county to advise the county highway superintendent of such determination, and to require him or a registered engineer retained by the board of county commissioners for that purpose to make a survey of such bridge sites. Such survey shall consist of a profile of the proposed site, approximate location in regard to the nearest section corner, soundings for the location of footings, and an estimate of the available watershed. (SDCL 31-14-3) Upon receipt of such plans and specifications, it shall be the duty of the county highway superintendent to make and file a detailed estimate of the cost of the bridge, abutment, pier, or other works contemplated by such plans, and file such estimate of cost with the county auditor. (SDCL 31-14-6)

In lieu of accepting any bids received upon any bridge, approach, or abutment, or repair to bridge, or in case of emergency, the board of county commissioners may, if in their judgment such bridge or piece of work may be procured for less money than the amount of any bid submitted, cause the same to be built by day labor by regular county labor and county-owned equipment. Such construction shall be in charge of the county highway superintendent and he shall hire a foreman, purchase the necessary

material, and hire the necessary labor for the construction of each and every such bridge, or piece of work, and such work shall be done in accordance with plans and specifications therefore furnished by the Department of Transportation the same as any other bridge or piece of work let by contract. (SDCL 31-14-21)

8.102 Bridge Construction Supervision

The county highway superintendent shall have supervision of construction of any and all bridges built by the county and he shall have the power to appoint an inspector for any such bridge or piece of work at any time when in his judgment constant inspection of the same is necessary. The compensation of such inspector shall be paid out of the county road and bridge fund and be charged as part of the cost of the particular bridge in question. (SDCL 31-14-17) The county highway superintendent shall report to the board of county commissioners every thirty days, or so often as they may require, as to the progress and character of the work done by the contractor of each bridge, or piece of work built by the county, and upon the report of said superintendent, partial payments in the amounts and manner specified for each particular bridge or piece of work shall be made. None of such partial payments, however, shall be held to constitute an acceptance of the work in whole or in part by the county. (SDCL 31-14-18)

8.103 Purchase of Materials for Bridge Construction

If it is deemed advisable by the board of county commissioners, they may purchase such materials as cement, sand, stone, metal, culverts, reinforcement steel, or other material to be used in the construction of roads, bridges, and culverts, in quantities sufficient to meet the estimated demand of such county for such materials for the next succeeding twelve months. Before purchasing any such materials, however, the board of county commissioners must first have an estimate prepared by the county highway superintendent setting forth the needs of the county during the twelve months, and the county highway superintendent shall prepare specifications of the quality of all materials, such specifications to be approved by the Department of Transportation. No patented material shall be specified to the exclusion of unpatented material. (SDCL 31-14-23)

8.104 Emergency Bridge Contracts

Whenever an emergency arises requiring immediate expenditure for the repair or rebuilding of bridges and approaches to bridges, when such bridges and approaches to bridges are required to be built immediately, and on such short time that in the judgment of the board of county commissioners the public would be seriously inconvenienced in awaiting the regular advertising for bids for such building and rebuilding of bridges and approaches, the board of county commissioners may enter into contract for any such building or rebuilding of bridges and approaches to bridges without advertising for the letting of any contract therefore. (SDCL 31-14-24)

If there are not sufficient funds in the road and bridge fund of any county for the payment of work authorized by § 31-14-24 the county commissioners are hereby authorized to issue emergency warrants based upon the assessments made and contemplated for road and bridge work. (SDCL 31-14-26)

Before any contract is let by any board of county commissioners under § 31-14-24, the necessity for such emergency contract must first be approved by the Department of Transportation and any contract let there under must in all respects be first approved by the department. (SDCL 31-14-25)

8.105 Bridge and Culvert Inspection

It shall be the duty of the county highway superintendent at reasonable intervals to make a thorough inspection of each and every existing bridge in the county. Such inspection shall consist of a

thorough examination of the whole structure for any conditions affecting the life and safety of the bridge such as faulty design, neglect of maintenance, excessive loading, development of cracks, conditions of footing, etc. The county highway superintendent shall make a report of the conditions of each such bridge as he finds it, together with recommendation for repairs, stating the date of inspection, and shall cause the same to be filed in the office of the county auditor who shall refer the matter to the board of county commissioners at their next regular or special meeting. (SDCL 31-14-32) The county highway superintendent shall make inspection of all culverts on secondary highways other than those described in § 31-14-33 and of all culverts on the county highway system and report to the board of county commissioners, which shall cause necessary repairs to be made. (SDCL 31-14-34)

8.106 Bridges Between Counties

It shall be lawful and the duty of the respective boards of county commissioners of the counties adjoining any highway or meandered stream on a county line in this state to divide that portion of such county line between such counties into two or more parts or districts, and to enter into an agreement and contract providing that each of such counties shall assume the liability and become responsible for the construction and maintenance of all necessary bridges upon such county line in the district allotted to such county. In case the stream forming the boundary between two counties shall be so large that one county alone is unable to build a bridge out of the ordinary amount of funds available, it shall be the duty of the two counties when a bridge is built over such stream to divide the expense equally between such two counties. (SDCL 31-14-35) In making such apportionment of any highway or meandered stream constituting the county line between two or more counties, as provided by § 31-14-35, the respective boards of county commissioners shall take into consideration the number of streams crossing such highway and the probable necessity of the number of bridges to be constructed and to be kept in repair upon such county line, and in apportioning the same into districts for the purpose of such section they shall equalize as near as possible the burden of building and maintaining the bridges on the highways of such county line. In case of a failure to apportion any such highway or meandered stream, as provided in § 31-14-35, the same shall be apportioned by the Department of Transportation. (SDCL 31-14-36)

Not more than one vehicle bridge in each county so situated shall be constructed under §§ 31-14-41 to 31-14-44, inclusive, and the total cost of such bridge shall in no case exceed the sum of fifty thousand dollars. (SDCL 31-14-45) (AGR 1949-50, pp. 271-273)

8.107 Guard Rails Required on Bridge

Repealed SDCL

8.108 Toll Bridges

Every municipality or county in this state is hereby authorized and empowered to purchase or otherwise acquire, equip, maintain, operate, and improve any interstate toll bridge within or partly within the corporate or territorial limits of such municipality or county or within five miles thereof, whether the same be all within or partly without this state, under the provisions of §§ 31-15-1 to 31-15-19, inclusive. (SDCL 31-15-3) A toll bridge is hereby declared to be a "utility," as referred to and defined in §§ 9-40-7 to 9-40-35, inclusive; and all such sections are hereby made applicable to the purchase, acquiring, maintaining or operating such bridges and, except as may be otherwise provided in this chapter, the municipality, county or their governing bodies shall have all the powers and may do all the acts and things therein set out as provided in said sections, and all the provisions of such sections are made applicable to toll bridges. (SDCL 31-15-4) For the purpose of defraying the cost of acquiring or

purchasing a bridge described in § 31-15-3, every municipality or county may borrow money and issue negotiable bonds without pledging or using the credit of such municipality or county. (SDCL 31-15-5) Bonds under § 31-15-5 shall be authorized, issued, and sold as provided in chapter 6-8B and § 9-54-12. (SDCL 31-15-6)

The governing board of any municipality or county may at any time prior to acquisition of title to any bridge described in § 31-15-3, or thereafter by resolution, provide for and create a bridge commission, the membership of which shall consist of the executive officer of such public corporation, together with four other persons appointed by such executive officer with the approval of the governing body thereof. Each person so appointed shall be at least twenty-five years of age and a bona fide resident and qualified voter of such public corporation and no officer or employee of such public corporation shall be eligible to such appointment until at least one year following termination of such office or employment. The appointments originally made shall be for two, three, and four years, respectively, as designated in the original appointment, and upon the expiration of such respective terms appointments for a period of four years and until the successors have qualified shall be made in the same manner as the original appointments. Appointments to fill vacancies shall be made in like manner for the balance of the terms. (SDCL 31-15-9) The members of each bridge commission constituted under § 31-15-9 shall receive such compensation as may be fixed from time to time by the governing body of the public corporation creating it; provided, that such compensation excepting the compensation of the member or members elected as secretary or treasurer or both, shall not exceed, in the aggregate, two hundred dollars in any one calendar year. (SDCL 31-15-12) Each bridge commission constituted under § 31-15-9 shall have power to establish bylaws, rules, and regulations for its own government and make and enter into all contracts or agreements deemed necessary or incidental to the performance of its duties and the execution of its powers under this chapter; provided, that all contracts of the commission involving the expenditure or disbursement of more than one thousand dollars must be approved by the governing body of the public corporation creating such commission prior to becoming effective, and provided also that no such commission shall have authority to expend or contract to expend any funds except those which may be realized through the issuance of bonds or through the collection of tolls for traffic over the bridge under its control, all as hereinafter provided. (SDCL 31-15-16) A commission constituted under § 31-15-9 shall be subject to any resolution or ordinance adopted by the governing body creating it in its acts or doings, and its officers may be required to furnish a bond for the faithful performance of their duties, either by resolution or ordinance of the governing body of such public corporation or by a resolution of such bridge commission. (SDCL 31-15-13)

8.109 Private Bridge Corporations

Repealed SDCL

8.110 Navigation on Rivers

The county commissioners of the several counties of the State of South Dakota bordering the Missouri River may, upon an affirmative vote of the qualified voters of said county, expend money for the purpose of improving navigation on the said river where said river borders on any of said counties, the funds to be expended in conjunction with appropriations made by the United States government in proportionate amounts as may be agreed upon by the county boards and the chief of engineers of the United States Army for the purpose of aiding in the securing of a permanent navigable channel in said river; the said funds to be expended by the chief of engineers of the United States Army in accordance with plans conforming to the character and approved methods of improvement of said river as now or may hereafter be determined upon by the chief of engineers of the United States Army. The county

commissioners as above designated of the several counties hereinabove referred to are hereby granted the power to appropriate moneys out of the general funds of the county available for county purposes to meet the expense of any such improvements. (SDCL 46A-15-4)

8.201 Highway

8.202 Highway

8.203 Highway

8.204 Highway

8.205 Highway

8.206 Financial Statement to Person Displace by Highway Acquisition

If federal funds are available for payment of direct financial assistance to persons displaced by highway acquisition, the Department of Transportation, any board of county commissioners, or any county highway board may match such federal funds to the extent provided by federal regulation as of February 3, 2005. (SDCL 31-19-49) If federal funds are not available or used for payment of direct financial assistance to persons displaced by the acquisition of property by the Department of Transportation or counties, the department or boards of county commissioners or county highway boards may provide direct financial assistance to such persons. Financial assistance authorized by this section may not exceed the total amount that would have been payable under § 31-19-49 if federal funds had been available or used. (SDCL 31-19-49.1)

8.207 Road and Bridge Levies

The levy of county taxes pursuant to § 10-12-8 shall include the following purposes: (1) For general county purposes;(2) For the support of the mentally ill pursuant to § 27A-13-15 and developmentally disabled pursuant to chapters 27B-4 and 27B-9;(3) For salaries;(4) For county roads, in addition to the road taxes levied by townships and municipalities, and it shall have the entire supervision of the expenditure of such taxes. In all municipalities an amount equal to the average road levy distributed to the municipalities within the county for calendar years 1984, 1985, and 1986 shall be paid by the county treasurer to the municipal finance officer of the municipality. If a municipality is incorporated after January 1, 1984, the amount paid to the municipality shall be determined pursuant to § 10-12-32.1. Such money shall be expended by the governing body of the municipality only for bridge and street purposes within the municipality;(5) For fire guards in territory not organized into civil townships, to be levied against the taxable property of such unorganized territory;(6) For county bridges;(7) For county parks pursuant to chapter 41-18;(8) For support of the poor pursuant to chapter 28-13;(9) For a public defender pursuant to chapter 7-16A;(10) For recreation, tourism and industrial development pursuant to § 7-18-12;(11) For contingency appropriations pursuant to §§ 7-21-6.1 and 7-21-32.2;(12) For county monuments pursuant to § 7-26-1;(13) For historical sites pursuant to § 7-26-3;(14) For historical museums pursuant to § 7-26-5;(15) For abandoned cemeteries pursuant to § 7-26-7;(16) For a county fair pursuant to chapter 7-27;(17) For real estate classification pursuant to § 10-10-2; (18) For weather modification pursuant to § 10-12-18;(19) For operation of a public library pursuant to § 14-2-47;(20) For the judicial system pursuant to chapter 16-2;(21) For day care centers pursuant to § 26-6-18.3;(22) For mental health centers pursuant to

§ 27A-5-9;(23) For senior citizens pursuant to § 28-18-6;(24) For emergency welfare pursuant to § 28-13-19;(25) For roads in national forests pursuant to § 31-9-4;(26) For health departments pursuant to § 34-3-22;(27) For drug abuse pursuant to chapter 34-3B;(28) For hospital operation and maintenance pursuant to §§ 34-8-19 and 34-8-20;(29) For hospital wards pursuant to § 34-8-23;(30) For aid to city hospitals pursuant to chapter 34-9;(31) For ambulance service pursuant to § 34-11-1;(32) For fire protection pursuant to chapter 34-31;(33) For conservation districts pursuant to §§ 38-8-49.1, 38-8-55, 38-8-56, and 38-8-57;(34) For weed and pest control pursuant to §§ 38-22-24 and 38-22-26;(35) For animal damage control pursuant to § 40-36-11;(36) For cooperative parks pursuant to §§ 42-2-10 and 42-2-11;(37) For recreation systems pursuant to chapter 42-2;(38) For activities of the elderly pursuant to §§ 42-2-6 and 42-2-7;(39) For geological survey pursuant to § 45-2-3; (40) For flood control pursuant to §§ 7-18-14, 7-18-15, and 46A-14-71;(41) For safety programs pursuant to § 7-18-13;(42) For airports pursuant to chapter 50-7;(43) For emergencies and disasters pursuant to chapter 33-15;(44) For Memorial Day expense pursuant to § 7-8-24;(45) For the fiscal and managerial affairs of the county pursuant to § 7-8-20;(46) For extension services pursuant to §§ 13-54-8 to 13-54-13, inclusive. (SDCL 10-12-9)

The board of county commissioners may levy an annual tax not to exceed one dollar and twenty cents per thousand dollars of taxable valuation as a reserve fund to be accumulated and used for the purpose of matching federal aid grants which have or may hereafter become available. Moneys in the fund may be expended in cooperation with the federal government in the laying out, marking, constructing and reconstructing roads and constructing and reconstructing bridges, under the jurisdiction of the board of county commissioners. The tax levy shall be in addition to all other levies authorized to be made by the board of county commissioners for road and bridge purposes provided for in § 10-12-21. The proceeds of such levy shall be placed in a special fund to be known as the "county highway and bridge reserve fund. (SDCL 10-12-13) Nothing in §§ 10-12-13 to 10-12-16, inclusive, may be construed to prohibit the board of county commissioners from using any other funds appropriated for highway and bridge purposes for the purpose of matching federal aid grants heretofore or hereafter made. (SDCL 10-12-17)

8.208 Right-of-Way

A right-of-way over private lands for highway purposes is merely an easement. If the highway is abandoned, the land automatically reverts to the fee owner or his successor since the right-of-way conveys easement and not fee title. Even through the county paid for the original easement, after the highway is abandoned, the easement no longer exists and thereby reverts to the former owner or successor. (Cn. VI, 13: AGR 1959-60, pp. 48-50)

8.209 County Vehicles

Any motor vehicle that is the property of this state, the United States, a county, a township, a municipality, a public or nonpublic school accredited by the Department of Education, an Indian mission school in this state, an Indian tribe, a fire department, or any bus or van owned by a church, or any vehicle purchased by the state under sections 18 and 16(b)2 of the Urban Mass Transportation Act of 1964 to provide public transportation or specialized transportation or both in rural and urbanized areas may be registered upon application, in the manner provided for other motor vehicles. However, the custodian of the vehicle shall make the application directly to the department. No fees may be charged for the registration of the vehicle. The department, upon payment to it of the actual cost of the plates, shall furnish number plates for the vehicle. All costs collected under the provisions of this section shall be deposited in the license plate special revenue fund. Any disbursement from this fund shall be made

by warrants drawn by the state auditor on vouchers duly approved by the department. If the vehicle is used for a private business use or as a commercial motor carrier as defined in § 32-9-1, the operator shall secure vehicle registration pursuant to chapter 32-9 for such use. (SDCL 32-5-42)

8.210 Highway Maintenance Facilities

Before funds authorized by the Legislature for the construction or acquisition of district highway maintenance facilities are used, the Department of Transportation shall meet with the local governing bodies of the counties and first and second class municipalities where highway maintenance facilities will be located to discuss joint construction or conversion of highway maintenance facilities. The Department of Transportation shall notify the local governing bodies in writing of its intention to construct new highway maintenance facilities. Then, the department shall meet with the local governing bodies to determine the feasibility of constructing or converting highway maintenance facilities in the counties and municipalities where the facilities will be located. The department shall consider sharing facilities whenever the local governing bodies express interest in sharing the cost of constructing or converting the facility. (SDCL 31-5-23)

The design and construction of a joint facility is under the supervision of the state engineer, as provided in § 5-14-2, is subject to the approval of the Transportation Commission and the governing body of the involved unit of government. (SDCL 31-5-26)

8.211 Wheel Tax for Highway and Bridge Maintenance

Any county may, by ordinance, impose a wheel tax on all motor vehicles, as defined in § 32-3-1, registered in the county at a rate not to exceed four dollars per vehicle wheel. The tax shall be administered and collected by the county. The total vehicle tax may not exceed sixteen dollars per vehicle. (SDCL 32-5A-1) If a county imposes a wheel tax pursuant to § 32-5A-1 in excess of two dollars per wheel, the ordinance shall be published within ten days of the decision by the board of county commissioners. Notwithstanding the provisions of § 7-18A-5, publication shall be made at least twice in the legal newspapers designated by the board pursuant to § 7-18-3, with no fewer than five days between publication dates, before the increase takes effect. The announcement shall consist of a reproduction of the ordinance, a statement of the right to refer the decision of the board to a vote of the people as provided in chapter 7-18A, and notification that a referendum petition form, prepared by the county and ready for circulation, for such ordinance may be obtained from the office of the county auditor. (SDCL 32-5A-1.1) The proceeds from the tax created by this chapter shall be retained by the county and deposited in the county road and bridge fund, and the revenue may be used only for highway and bridge maintenance and construction. The board of county commissioners shall, by resolution, establish a means of distributing the revenue generated by this chapter among the county and the municipalities and townships located within the county. (SDCL 32-5A-2) Upon purchasing a vehicle from a dealer, the purchaser shall pay the appropriate tax at the time of title transfer. Nothing in this chapter shall prevent an automobile dealer from licensing the vehicles on his lot without paying any taxes created by this chapter. (SDCL 32-5A-3) The Department of Revenue and Regulation shall include on any motor vehicle registration document mailed out to a vehicle owner prior to the annual registration of a motor vehicle, the amount of tax imposed pursuant to § 32-5A-1. A county in which such registration documents are mailed to motor vehicle owners shall reimburse the Department of Revenue and Regulation for the cost of implementing this section for that county. (SDCL 32-5A-4)

8.212 Hunting License Revenue

Repealed SDCL

Chapter 9
Health, Welfare and Recreation

Public Health Duties

9.001 Responsibility for Health Conditions

The Public Health Advisory Committee is abolished, and its functions set forth in §§ 34-1-13, 34-1-16, 34-1-16.1, 34-1-17, 34-1-20, 34-1-21, 34-1-26, and 34-1-27 are transferred to the State Department of Health. (SDCL 34-1-2.2)

9.002 County and District Health Department

The board of county commissioners of any county of this state may establish within its county a full-time county health department and provide for the maintenance thereof. Full-time health departments shall be construed to be an organization under the immediate direction of a health officer and employing trained public health personnel who shall devote their entire working time to the prevention of disease and the promotion of public health. (SDCL 34-3-1) One or more adjacent counties may submit to the electors of said counties at a general or special election, the question of establishing a county health department. Upon affirmative majority vote in each county, such department may be jointly created. In the event any one county does not return a majority vote, nothing herein shall prevent the other county or counties from so creating said department. (SDCL 34-3-2) Any municipality of the first class located within a county wherein a full-time county health department has been or is being established, may by mutual agreement between its governing body and the board of county commissioners of said county, merge its health service with such county department and participate in the financial maintenance of such county department to the extent of such agreement, and thereupon the county department shall have full supervision and control over all matters pertaining to public health in said municipality. Whenever a municipality of the first class shall merge with the county department, the mayor or member of the governing body of such municipality by it selected, shall become a member of the county board of health and shall be in addition to the members provided in § 34-3-3. (SDCL 34-3-5)

There shall be created in each county maintaining a full-time county health department, a county board of health consisting of seven members to be appointed by the county commissioners as follows: One member shall be a member of such board of county commissioners, appointed for one year at the first official meeting of such board in each calendar year; one member shall be a practicing physician and shall hold office for a term of four years; five members are to be selected from the electors of the county to hold office for terms of five years each, except that the initial term shall be staggered in such manner that the term of one board member so chosen shall expire each year. Vacancies occurring on the county board of health shall be filled by appointment by the board of county commissioners for the unexpired term affected. (SDCL 34-3-3) A full-time county health department may be dissolved by resolution of the board of county commissioners, and a first or second class municipality may withdraw from such department by resolution of its governing body, at any time after one year from the establishment of the department, or merger therewith, as the case may be; provided that no dissolution or withdrawal shall occur during any fiscal year for which a budget has been approved therefore, and in

no case until ninety days' prior written notice thereof has been given the county board of health. (SDCL 34-3-8)

Two or more adjacent counties and municipalities of the first class located therein may, by mutual agreement of their governing boards, establish and maintain a full-time district health department. When municipalities of the first class desire to cooperate in the maintenance of a full-time district health department, they shall contribute financially in such amount as may be agreed upon by the governing board of the municipality concerned and the county commissioners for the county in which such municipality is located. Such municipality funds shall be considered as contributing to the county's proportionate share of the total district health department budget. (34-3-9) A full-time district health department shall be construed to be a department organized to serve contiguous territory in two or more adjacent counties, and which shall be under the immediate direction of a health officer and employing trained public health personnel who shall devote their entire working time to the prevention of disease and the promotion of public health, provided that physicians may be employed on a part-time basis to act as assistant health officers. (SDCL 34-3-10) When two or more counties unite to form a full-time district health department a district board of health shall be created in the following manner: an appointing committee shall be formed, consisting of a representative of each governing board of each participating county and first or second class municipality, to be elected by such governing board. Counties and municipalities which become a part of such district after its initial formation shall have a representative on the appointing committee, to be selected in the same manner. Such committee shall appoint a district board of health consisting of five members, one of whom shall be a physician practicing in the district. When the number of counties and municipalities participating in the maintenance of such health department is five or less, then a qualified elector from each such participating county and municipality shall be appointed to the board. (SDCL 34-3-13) Originally one member of the district board of health shall be appointed for one year, one member for two years, one member for three years, one member for four years, and one member for five years. Upon the termination of the term of appointment, members shall thereafter be appointed for a term of five years. Vacancies which occur on the district board of health shall be filled for the unexpired portion of the term of the vacated member by appointment as provided in § 34-3-13. (SDCL 34-3-14) Any county or first or second class municipality participating in a full-time district health department may withdraw from the department and board by resolution of its governing board providing no such withdrawal may occur within one year of the date of establishment of the department or the date of entrance of said county or municipality into said department. It is further provided that no withdrawal shall occur during any fiscal year for which a budget has been approved and in no instance until ninety days' prior written notice of such withdrawal has been given to the district board of health. When a participating county or municipality withdraws from a district health department its representative on the appointing committee shall also withdraw there from and any positions held by its representatives on the district board of health shall be declared vacant and the vacancy or vacancies so created shall be filled as provided in § 34-3-3. (SDCL 34-3-27)

The board of health of a full-time county or district health department shall meet at such times and at such places as the county or district health officer may designate but in no instance shall meetings be held less than semiannually. The health officer shall call a meeting when requested to do so by a majority of the members of the board. (SDCL 34-3-17) Full-time county and district boards of health shall employ a full-time health officer whose term of office shall be four years, and such other personnel as may be determined by the State Department of Health to be needed to efficiently carry on the work of the county or district department. (SDCL 34-3-18) The powers and duties of the board of health in a full-time county or district health department shall be the same as those specified for county boards of health and the superintendents thereof as provided for by chapter 34-16. (SDCL 34-3-26)

The State Department of Health is hereby authorized to use funds which it may receive for public health purposes from federal or other governmental agencies or from nongovernmental agencies both within and without the state for the purpose of making grants to counties or districts for the maintenance of full-time health departments. Municipalities, school boards, and other official or nonofficial agencies shall also be permitted to contribute funds toward the maintenance and operation of said departments. All activities carried out through the use of funds so contributed shall be under the direction of the full-time health officer. (SDCL 34-3-20) Funds for operation and maintenance of full-time health departments shall be derived from the general fund of the participating political subdivisions. (SDCL 34-3-22)

The board of county commissioners is vested with discretion in approving the budget submitted by the county board of health. The health board determines the salaries of its employees within the budget as approved. (SDCL 34-3-24) (AGR 1957-58, pp. 176-178) In the case of a full-time county health department, all funds made available for the operation of such department from all sources shall be deposited with the county treasurer who shall disburse said funds as provided by law upon vouchers certified by the health officer. (SDCL 34-3-6) (AGR 1955-56,, pp. 73-75)

The State Department of Health is hereby authorized to use funds which it may receive for public health purposes from federal or other governmental agencies or from nongovernmental agencies both within and without the state for the purpose of making grants to counties or districts for the maintenance of full-time health departments. Municipalities, school boards, and other official or nonofficial agencies shall also be permitted to contribute funds toward the maintenance and operation of said departments. All activities carried out through the use of funds so contributed shall be under the direction of the full-time health officer. (SDCL 34-3-20) (AGR 1955-56, pp. 73-75)

The county commissioners shall be paid traveling expenses for each mile traveled in the discharge of their official duties of not more than the state rate. For the purpose of this section, traveling expense incurred by county commissioners to attend meetings in the State of South Dakota, called for the purposes of instructing or exchange of information pertaining to county officers and government, are miles traveled in the discharge of their official duties. (SDCL 7-7-4) (AGR 1955-56, pp. 73-75)

9.003 Establishment and Issuance of Bonds for a County Hospital

The board of county commissioners in any county in this state may establish and maintain or lease to be maintained a county hospital for the care and treatment of county charges and such other persons as may apply for admission to such hospital. In this chapter, the term "hospital" may be construed to mean a hospital, a medical facility and its equipment, a nursing facility or a home for the aged, or any building used or to be used for any two or more of these purposes. (SDCL 34-8-1)

The board of county commissioners in any county in this state may issue the bonds of the county for the purpose of purchasing an existing hospital and site, upon an appraisal by a board established by usual procedure with or without equipment and supplies, or other suitable buildings and site, or for the purpose of purchasing a site for a hospital and for the erection, equipment, and maintenance thereof, in either event, or for the construction and equipment of one or more additions and improvements to an existing hospital. No county may issue its bonds under the provisions of this section in excess of two percent of its assessed valuation of the taxable property therein for the year preceding that in which the indebtedness is incurred. A continuing annual tax shall be levied for the payment of the bonds and interest thereon in accordance with § 7-24-18. All bonds shall be authorized, issued, and sold as provided in chapter 6-8B. (SDCL 34-8-2)

The commissioners, by resolution, may hold an election to decide if the public wants to establish and maintain a county hospital. If an election on the bond issue is also held, they may be held at the same time, but both issues must receive sixty percent of the votes cast.

When a county has been authorized to issue and sell its negotiable bonds with which to construct and equip a county hospital, it may use surplus funds in its general fund to complete the project where the amount realized from the bond sale is inadequate to complete the hospital. (AGR 1957-58, pp. 209-210)

In lieu of issuing bonds to purchase an existing hospital, with or without equipment and supplies, or other suitable buildings or to purchase a site, erect, establish, and maintain a county hospital, the board of county commissioners may levy a tax, not to exceed sixty cents per thousand dollars of taxable valuation of the county in any one year to provide a special revenue fund to purchase an existing hospital, with or without equipment and supplies, or other suitable buildings or to purchase a site, erect, establish, and maintain or lease to maintain a county hospital. If a sufficient amount is raised, the board of county commissioners shall purchase or erect, equip and maintain or lease to maintain a county hospital as provided in this chapter.(SDCL 34-8-5)

A county may establish or purchase a county hospital by raising the necessary fund by either a bond issue or by a tax levy. In other words, the necessary funds must be raised either by a bond issue or a special tax for a sinking fund for the buildings purposes; the bond issue method would prohibit the levying of the tax and vice versa. (AGR 1959-60, pp. 372-373)

The board of county commissioners of any county maintaining, operating, or leasing to any organization a county hospital shall appropriate from the general fund an amount sufficient to operate and maintain the county hospital. (SDCL 34-8-19)

The board of county commissioners of any county in which no county hospital has been established may establish one or more wards in any public or private hospital situated in the county, or any adjoining county for the use of the county under such regulations as may be agreed upon. For such purpose the board shall appropriate the necessary money from the general fund. (SDCL 34-8-23)

A county cannot construct a doctor's clinic with county funds with doctors renting the building from the county for their private business. A doctor's clinic has never been defined by law as a hospital (AGR 1959-60, pp. 226-227) However; another attorney general's opinion states that SDCL 34-9-1 includes a medical clinic within the purview of "medical facility". And, a county medical clinic must be authorized by a vote of the residents of the county. (AGR 74-15)

On the completion of a county hospital the operation and management thereof shall be the responsibility of the board of county commissioners of the county owning such hospital and the board shall establish rules and regulations for its operations. (SDCL 34-8-6)

9.004 Operation of County Hospital

No person, partnership, Limited Liability Company, association, or corporation may establish, conduct, or maintain in the State of South Dakota, any health care facility or related institution for the hospitalization or care, or both, of human beings without first obtaining a license from the South Dakota Department of Health in the manner provided in this chapter. The term, corporation, as used in this chapter means public and municipal corporations as well as private corporations. (SDCL 34-12-2)

Every county hospital established and maintained under the provisions of this chapter shall be kept and maintained as a public, county hospital. It may charge a reasonable price for the use of such hospital and its facilities to such persons being residents of the county as may be determined by the board of county commissioners to be county charges without means and in that event the cost of such services at such hospital shall be paid to the hospital fund from the general fund on behalf of such

county charges. It may also collect accounts which are due and it may employ collection agencies or attorneys on a contingent fee basis or may assign the claim for collection. (SDCL 34-8-11) Whenever any county within this state shall become obligated to and does pay the hospital bills and charges for any of the persons defined in § 34-8-11 as "county charges without means," the county in such case shall have a lien upon all of the property, real and personal except property absolutely exempt from seizure and sale, of such persons defined herein, for all sums expended therefore by any county; such lien shall be established, recorded and foreclosed as provided by chapter 28-14, and all the provisions of said chapter are hereby made applicable thereto. (SDCL 34-8-14)

Whenever any county within this state, maintaining and operating a hospital under the provisions of this chapter, is requested to and does furnish the use of its hospital and its facilities to any person or to any member of such person's family, who may be other than persons defined as "county charges without means," the county in such case shall have a lien upon all of the property, real and personal, except property absolutely exempt from seizure and sale, of such person who receives the use of such hospital and its facilities for the cost of the services charged to such person for the use of such hospital and its facilities. (SDCL 34-8-15) The lien provided for in § 34-8-15 shall cease at the end of ninety days after the rendering of the last service or the last use of the facilities of such hospital, unless the board of county commissioners shall direct the county auditor to cause to be filed with the register of deeds the verified statement provided for in § 34-8-17. (SDCL 34-8-16) Whenever directed by the board of county commissioners, of the county maintaining and operating a hospital under the provisions of this chapter, the auditor of said county shall cause to be filed in the office of the register of deeds of such county a verified statement containing the name of any such person, other than a county charge without means, receiving the use of such hospital and its facilities, including the name of the person obligated for the support of such person if it be other than the recipient of the services, together with the amount of the charges for the services rendered. Upon the filing of such statement the register of deeds shall index the same in a record to be provided for the purpose, and from the time of the filing thereof it shall constitute actual notice to all persons of the lien as provided in § 34-8-15. A certified copy of such statement may be filed in the office of the register of deeds of any county in the state, and shall be filed and indexed as a part of the public aid to poor lien records of such county; and from the time of filing thereof shall constitute actual notice to all persons of a lien upon any property of said person in said county to the extent as provided in § 34-8-15. (SDCL 34-8-17) The lien provided by § 34-8-15 shall be foreclosed as provided by chapter 28-14, and all property acquired by the county upon any such foreclosure shall be disposed of as provided by said chapter. (SDCL 34-8-18)

The board of county commissioners, instead of maintaining and operating said hospital in the name of the county, may call for bids for the leasing thereof for a term of years, to competent and responsible societies or corporations, which shall furnish a sufficient bond to be approved by the board of county commissioners, for the proper fulfillment of all the terms of the lease; in which case the county shall be released from responsibility in the maintenance and operation thereof and from any debt incurred thereby. (SDCL 34-8-10)

On the completion of a county hospital the operation and management thereof shall be the responsibility of the board of county commissioners of the county owning such hospital and the board shall establish rules and regulations for its operations. (SDCL 34-8-6) To manage or assist them in the management of a county hospital, the board of county commissioners may appoint a board of trustees consisting of five competent and responsible freeholders of the county, one of whom shall be a legally qualified physician or nurse, in which case one member of said board shall be appointed for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years, and one for a term of five years. Their terms of office shall expire on the first Monday of July of the year of expiration. Thereafter it shall be the duty of such board of county commissioners annually at their

regular meeting in July to appoint for a term of five years a successor to the trustee whose term of office shall expire during that year. Any member of such board of trustees may be removed at any time by the board of county commissioners. (SDCL 34-8-7) (AGR 1961-62, p. 43)

9.005 Joint county and Municipal Hospitals, Nursing Homes and Homes for the Aged

As used in this chapter:(1) "Department" means South Dakota Department of Health;(2) "Federal secretary" means the secretary of health and human services of the United States;(3) "Hospital" includes public health centers and general, tuberculosis, mental, chronic disease, and other types of hospitals, and related facilities, including osteopathic hospitals, such as laboratories, out-patient departments, nurses' home and training facilities, and mental service facilities operated in connection with hospitals, but does not include any hospital furnishing primarily domiciliary care;(4) "Nonprofit hospital" means any hospital owned and operated by a corporation or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual;(5) "Public health center" means a publicly owned facility for the provision of public health services, including related facilities such as laboratories, clinics, and administrative offices operated in connection with public health centers;(6) "The federal act" means Public Law 88-443 approved August 18, 1964, entitled the Hospital and Medical Facilities Amendments of 1964 and all amendments thereto, Public Law 88-156 approved October 24, 1963, entitled The Maternal and Child Health and Mental Retardation Amendments for 1963 and all amendments thereto, Public Law 88-164 approved October 31, 1963, entitled Mental Retardation Facilities Construction Act and all amendments thereto, or any other public law relating to hospital survey and construction. (SDCL 34-7-1)

The board of county commissioners in any county in this state may establish and maintain or lease to be maintained a county hospital for the care and treatment of county charges, and such other persons as may apply for admission to such hospital. In this chapter, the term "hospital" may be construed to mean a hospital, a medical facility and its equipment, a nursing facility or a home for the aged, or any building used or to be used for any two or more of these purposes. (SDCL 34-8-1) The board of county commissioners may by resolution or ordinance submit the question of establishing and maintaining a county hospital to the voters of the county at any regular election or at a special election called for that purpose. The election shall be held in the manner and upon the notice prescribed by law for county bond elections. If sixty percent of the ballots cast are in favor of the establishment and maintenance of a county hospital, the board of county commissioners may establish and maintain a county hospital according to the provisions of chapter 34-8. The election on the question of establishing and maintaining a county hospital may be held at the same time as the election on the bond issue. If the bond issue receives sixty percent of the votes cast, and the establishing and maintaining of a county hospital fails to receive sixty percent of the votes cast, the bond issue is deemed to have failed. (SDCL 34-8-4) (AGR 1959-60, pp. 278-279)

Every city may:(1) Establish, construct, purchase, and maintain hospitals and medical clinics and regulate the same;(2) Lease any hospital and medical facilities to persons and private or public corporations, limited liability companies, associations, or other organizations for the purpose of operation for a period, not to exceed ninety-nine years, provided that in the opinion of the governing body the needs of the municipality can best be served thereby;(3) Receive and accept financial aid from counties for the erection and construction of public hospitals upon such conditions as may be agreed upon and to irrevocably obligate itself to repay such county for such aid out of common revenue in the event the operation and maintenance of the hospital is discontinued or abandoned for any cause by the city. (SDCL 34-9-1)

The boards of county commissioners of the several counties and the governing bodies of municipalities of this state, may, in their discretion, contribute sums of money annually not to exceed twenty thousand dollars per annum to nonprofit self-sustaining corporations formed for the care and accommodation of aged persons under the provisions of §§ 28-18-1 to 28-18-4, inclusive. For the purpose of carrying out the provisions of this section, such boards of county commissioners and such governing bodies of municipalities may appropriate out of the general fund of their respective counties or municipalities. (SDCL 28-18-6) This statute deals only with the care of the aged; therefore it is not authority for the commissioners to appropriate funds to an operating nonprofit private hospital for the purchase of equipment. (AGR No. 74-41)

If a first or second class municipality within a county which has no established county hospital makes provisions to construct, equip, and operate a public hospital having a capacity of not less than twenty patients and the board of county commissioners determines that the operation of a hospital will be beneficial to the public and that a necessity exists for it and, in order to provide to the public a hospital facility, it will be necessary for the county to provide financial aid to the municipality for the cost to construct a hospital building, it may, by appropriate resolution, declare a public necessity to exist and that it is desirable that the county render financial aid to the municipality in an amount not to exceed one-half of the cost to construct a hospital building and that the funds may be made available:(1)Out of unappropriated funds belonging to the county; or(2)By issuance and sale of its general obligation bonds pursuant to chapter 7-24. (SDCL 34-9-5)

Whenever a first or second class municipality has established a hospital as provided by § 34-9-5, and without regard to whether a county has participated in the cost of its construction as provided in § 34-9-5, the board of county commissioners may, by appropriate resolution, render financial aid to such first or second class municipality for the cost of equipment, operation, and maintenance of such hospital. The term "hospital" as used in this section shall not include a nursing facility or a home for the aged. (SDCL 34-9-7.1)

9.006 County Loans and Grants for Medical Services

Notwithstanding any other provisions of law to the contrary, the board of county commissioners and/or the local governing body may, by unanimous vote of its members, grant, loan, or pay to an individual, upon such terms and on such conditions as the board shall set forth, moneys from any source of funds available to them for the purpose of ensuring the availability of professional medical services within the county. (SDCL 34-8A-1) The boards of county commissioners of several contiguous counties and/or the local governing body may jointly enter into contractual arrangements to carry out the purposes of this chapter. (SDCL 34-8A-2) The board of county commissioners and/or local governing body shall set forth at the time of the negotiation of the contract for grant or loan, the time and method of reimbursement, if any, to the appropriate fund, by the individual or individuals, who will provide professional medical services. (SDCL 34-8A-3) This is not a “general purpose statute.” The recipient of any benefit authorized by this statute is specifically limited to an individual and must be given for the purpose of ensuring the availability of professional medical services with the county. (AGR No. 74-41)

9.007 Hospitalization of Indigent Person in Emergency and Non-Emergency Cases

28-13-27 Hospitalization of poor persons--Definition of terms.
28-13-27.1 Medically necessary hospital services.
28-13-27.2 Cost guidelines for medical and remedial services.
28-13-28 Statement of costs required of hospital caring for indigent persons--Frequency of

statements.
28-13-29 Cost governed by statement or amendment--Claim against county not to exceed usual hospital rates.
28-13-30 Approval of statement by secretary--Modification of items in statement.
28-13-31 Continuation of statement in effect until withdrawn or amended--Effective date of amendments--Statements available for inspection.
28-13-32 County commissioners' objections to statements.

To receive assistance under this chapter for the costs of hospitalization, a person must be medically indigent as defined in § 28-13-1.3. The person or someone acting on behalf of the person shall apply to the person's county of residence for assistance within two years of the date of the hospital's discharge of the person. (SDCL 28-13-32.3) An application made by a hospital on behalf of a medically indigent person pursuant to § 28-13-32.3 shall be submitted to the county auditor within one year of the discharge of the indigent. The application shall include:(1) The notice of hospitalization as provided in § 28-13-34.1;(2) The dates of hospitalization;(3) The final diagnosis;(4) The cost of hospital services; and(5) Any financial information in the possession of the hospital concerning the patient or the responsible party, including the availability of insurance coverage. The county may not require the hospital to provide more information concerning such a medically indigent person than is contained in the application provided for in this section and the release of information provided for in § 28-13-34.2.(SDCL 28-13-32.4)

Subject to the provisions in SDCL 28-13-28 to 28-13-32, if hospitalization for an indigent person is an emergency, the county where the indigent resides shall be liable to the hospital for expenses. In the case of non-emergency, the county of residence shall be liable only to the extent the county commissioners approve any application for assistance.

9.008 Mental Health Centers

The boards of county commissioners and the municipal governing bodies may contribute sums of money annually from their general fund to any mental health center, clinic, or community support provider approved by the Department of Human Services, or to each of such facilities, without regard to whether they are within or outside of their respective jurisdictions. (SDCL 27A-5-9)

If a county makes a contribution of at least one dollar per capita to the support of a mental health center in accordance with § 27A-5-9, no charge may be levied against the county for persons provided treatment by such mental health center until the cumulative total of such charges reaches seventy-five percent of the total county contribution. Thereafter, such county shall be charged at a rate of seventy-five percent of the rate at which it would normally be charged in accordance with the fee schedule prescribed by the Department of Human Services. (SDCL 27A-5-10)

During the 1991 and 1992 Legislative Sessions, mental health laws were changed immensely. A short synopsis of the legislations would not be adequate, therefore please refer to SDCL 27A-1-1, and the pocket supplement for detailed information.

9.009 County Nurse

The board of county commissioners of any county may at any time when in their judgment and discretion the public health and interests of such county will be benefited thereby, employ nursing personnel as defined in chapter 36-9. (SDCL 34-4-5)

9.0010 Care of Mentally Ill

The board of county commissioners shall annually appropriate a sum sufficient to pay for the support of its mentally ill. (SDCL 27A-13-15)

If the administrator of the Human Services Center has treated a patient as from a county determined to be the county of the patient's residence by the committing board of mental illness and that county has appeared before the committing board to contest its determination of residence in the manner provided in this title, the state's attorney or county commissioners of the county may notify the attorney general that the patient is a proper charge against another county. Upon receipt of such notice, the attorney general shall notify the clerk of courts of the committing county to file, within thirty days from the date of such notification, a summary of the proofs upon which such findings are based and the record of any initial or reopened commitment hearing on the patient. The attorney general shall determine from review of such records, which county should be charged. The attorney general shall notify the county auditor of the contesting county, the auditor of the county of residence, and the clerk of courts of the committing county and the administrator of the Human Services Center of his determination. Thereafter the administrator shall charge for treatment according to the determination of the attorney general. (SDCL 27A-13-18) If any county is dissatisfied with the determination of residence entered by the attorney general, such county may appeal to the circuit court, by filing and serving a notice of appeal upon the attorney general and upon one of the members of the board of county commissioners of the county adversely interested, within thirty days from the date of such determination, and thereupon the circuit court shall conduct a trial de novo and, by a preponderance of evidence, determine the residence of such patient and determine against what county he is a proper charge, and such determination is conclusive unless an appeal is taken there from in the manner provided by law for appeals in civil actions. (SDCL 27A-13-20) Moreover, the county is not liable for the expenses incurred by a voluntary patient who is not committed by the county board of mental illness. (AGR 1953-54, pp. 81-82)

In each county a magistrate judge or lawyer shall be appointed by the presiding circuit judge of the circuit in which the county is situated to serve as the chair of the county board of mental illness. Any board conducting commitment hearings shall consist of the chair and two other persons appointed by the board of county commissioners for a three-year term. The two members appointed by the county commission shall be residents of the county. The chair appointed by the presiding circuit judge need not be a resident of the county. The members of the board of mental illness who are appointed by the board of county commissioners may be appointed to more than one term but may not serve more than two consecutive three-year terms. The state's attorney for the county may not serve on the county board of mental illness. Each appointing authority shall also appoint alternates. Pursuant to chapter 1-24, two or more counties may jointly contract to establish a board of mental illness to serve all contracting counties. In such case, the county commissioners of the contracting counties shall jointly appoint the two board members referred to in this section. The members may be residents of any of the counties under joint contract. (SDCL 27A-7-1)

The members of the board of mental illness, other than a magistrate judge, shall be allowed compensation at an hourly rate as determined by the county commissioners for all time actually employed in the duties of their offices as members of such board of mental illness. All members of the board shall be allowed mileage at the rate determined by the board of finance and other necessary actual expenses incurred in the performance of their duties as members of such board. (SDCL 27A-7-8) Procedure for the commitment and care of mentally ill persons by the county board of mental illness are governed by SDCL Chapter 27-7.

Effective January 1, 2007 through December 31, 2008, the county of residence shall pay an admission fee of four hundred dollars to the center for each patient the county is legally responsible. The admission fee shall cover the first thirty days of care at the center. If the patient remains at the

center for longer than thirty days, the minimum charge paid by the county of residence shall be a pro rata amount of the admission fee multiplied by twelve months and divided by three hundred sixty-five days. Effective January 1, 2009 through December 31, 2009, the county of residence shall pay an admission fee of five hundred dollars to the center for each patient the county is legally responsible. The admission fee shall cover the first thirty days of care at the center. If the patient remains at the center for longer than thirty days, the minimum charge paid by the county of residence shall be a pro rata amount of the admission fee multiplied by twelve months and divided by three hundred sixty-five days. Effective January 1, 2010 through December 31, 2010, the county of residence shall pay an admission fee of six hundred dollars to the center for each patient the county is legally responsible. The admission fee shall cover the first thirty days of care at the center. If the patient remains at the center for longer than thirty days, the minimum charge paid by the county of residence shall be a pro rata amount of the admission fee multiplied by twelve months and divided by three hundred sixty-five days. (SDCL 27A-13-16)

During the 1991 Legislative Session, mental health laws were changed immensely. A short synopsis of the legislation would not be adequate, therefore refer to the SDCL 27A-1-1, and the pocket supplement for detailed information.

9.0011 Care of the Mentally Retarded

Repealed SDCL

9.0012 Creation of Sanitary Districts

Whenever any populated area without the boundary of any municipality shall be so situated that the sewage thereof becomes, or may become, a menace to the residents of said area or to the residents of any municipality adjacent thereto, the same may be incorporated as a sanitary district under this chapter as provided therein. (SDCL 34A-5-1) Any person making application for the organization of a sanitary district shall first cause an accurate map to be made of the territory intended to be embraced within the limits of such sanitary district, showing the boundaries and area thereof, and the accuracy thereof shall be verified by the affidavit of a surveyor. The map may be completed by reviewing records and legal descriptions at a county register of deeds office. (SDCL 34A-5-3) The survey and map when completed shall be left at some convenient public place, to be designated by the county auditor of the county in which the application for incorporation is to be filed, within the territory for a period of not less than twenty days for examination by any person having an interest in the application. (SDCL 34A-5-5)

The application for organization shall be as provided in § 6-16-2 and shall be filed with the county auditor and presented to the board of county commissioners for consideration at the board's next meeting. (SDCL 34A-5-6) If the board of county commissioners shall be satisfied that the requirements of this chapter have been fully complied with, the board shall issue an order declaring that the territory shall, with the assent of the electors as specified in § 6-16-2, in an election as provided in §§ 6-16-4 to 6-16-6, inclusive, be an incorporated sanitary district by the name specified in the application. The name shall be different from that of any other sanitary district in this state. (SDCL 34A-5-7) If a majority vote in favor of the incorporation, the territory shall be deemed a sanitary district by the name and style specified in the order of incorporation by the board of county commissioners; otherwise, no further proceedings may be taken. (SDCL 34A-5-11) If satisfied with the legality of the election, the board of county commissioners shall issue an order declaring that the sanitary district has been incorporated by the name adopted. The order shall be conclusive of the fact of incorporation in all suits by or against the sanitary district. (SDCL 34A-5-12)

No board of county commissioners may accept a plat for any new subdivision or a change in any plat for an enlargement of any existing subdivision which is adjacent to or includes any of the waters of the state within such county unless such plat includes provisions that are binding upon the developer of such subdivision which protects such body of water from pollution from sewage from such subdivision. (SDCL 11-3-8.1)

9.0013 Public Hospital Districts

Whenever a petition praying that a public hospital district be established signed by not less than ten percent of the resident electors residing within the boundaries of the proposed public hospital district, which petition shall definitely describe the boundaries of the proposed district and request that the territory within said boundaries be organized into a public hospital district, shall be filed with the county auditor of the county within which said district is situated, and a duplicate thereof with the county auditor of each county where the district extends in more than one county; the same shall be presented by said county auditor or auditors to the board or boards of county commissioners at the first ensuing regular, adjourned, or special meeting of said board or boards. A petition for a popular vote on the question of issuing hospital bonds may be submitted at the same time or at a separate election after formation of the district. The petition for a bond issue election shall be subject to the same requirements as a petition for the creation of a hospital district. (SDCL 34-10-2) The board of county commissioners at the next regular, adjourned, or special session shall canvass the petition or petitions and if signed by the requisite number of resident electors, it shall order an election to be held in all voting precincts in the proposed district not less than forty nor more than sixty days from the date of such order, upon the question of the creation of the district and, subject to the creation thereof, for the election of seven trustees of such proposed district. It shall appoint from the resident electors of each voting precinct as established for the purpose of the last general election, and included within the boundaries of said proposed district, three judges and two clerks of election for each said voting precinct. If only a portion of a precinct as established under the general election laws is included in said district, the board shall have authority in its order calling said election to attach said territory to an adjacent precinct for the purpose of such election or to establish said area as a new precinct. (SDCL 34-10-3) In the event that sixty percent of the votes cast in each voting precinct or portion thereof, which is included in the proposed district, are in favor of the creation and establishment of said public hospital district, the board or boards of county commissioners shall within ten days after the election, by resolution certify such result and proceed with the organization of such district as specified in this chapter. (SDCL 34-10-9) Said public hospital district shall be governed and managed by a board of seven trustees elected by the persons within the district. The trustees must be elected from among the person's resident within said district. (SDCL 34-10-11) The hospital district board, at the close of each year of business, shall cause an audit to be made by the State Department of Legislative Audit, or an auditor approved by the State Department of Legislative Audit of the books, records, and financial affairs of the district, and a written report of such audit shall be kept on file in the principal place of business of the district. (SDCL 34-10-29)

In lieu of issuing bonds, the hospital district board may levy an annual tax not to exceed five mills for the purpose of purchasing, constructing, equipping, leasing, or otherwise acquiring and maintaining a hospital, and shall direct the treasurer of the district to place such moneys in a district construction fund. When a sufficient amount of money is accumulated in the district construction fund the board may proceed to purchase, construct, equip, lease, or otherwise acquire a hospital, except that the electors of the district shall first approve the purchase, construction, leasing, or other acquisition of a hospital by a

majority of all votes cast on such issue. An election on such issue shall be called and held in the same manner as an election on a proposal to issue bonds. (SDCL 34-10-25)

The boundaries of any public hospital district may be altered and outlying districts annexed from territory contiguous thereto in the following manner: a petition signed by sixty percent of the resident electors within the territory proposed to be annexed, designating the boundaries of such contiguous territory proposed to be annexed and asking that it be annexed to said public hospital district, shall be presented to the board of trustees. At the first regular meeting after the presentation of said petition, said board shall cause notice of said petition to be published in two successive issues of an official newspaper published in each county in which said district is situated prior to the date fixed by the board for a hearing of said petition, which date shall not be less than four weeks after the filing of such petition. Upon the date fixed for such hearing or continuance thereof, said board shall take up and consider said petition and any objections which may be filed to the inclusion of any additional area or territory in said district. Said board shall have the power by order entered on its minutes to grant or deny said petition, and by order entered on its minutes to alter the boundaries of said hospital district and to annex thereto said area or territory described in said petition. This territory shall become and be a part of such public hospital district and shall be subject to the tax authorized by this chapter, together with the preexisting area of said district. (SDCL 34-10-10)

The purpose of this chapter is to authorize the establishment of public hospital districts, which shall have power to own and operate and equip public hospitals, or to lease and operate public hospitals, or to maintain or aid in the maintenance and operation of a public hospital, and in either case to supply hospital facilities and services to residents of such districts, and as herein authorized, to others, and to issue bonds and levy taxes for the payment of the same. In this chapter the term "hospital" or "public hospital" shall include a nursing facility or home for the aged.(SDCL 34-10-1) At any time after five years from the date any public hospital district is created, such district may be dissolved following the same procedures for the establishment of the district, set forth in this chapter. However, such district shall not be dissolved if it is indebted in any amount beyond funds immediately available to extinguish all of the debts and obligations of such district. (SDCL 34-10-30)

9.0014 Hospital and Medical Insurance

The board of county commissioners may enter into group hospital and medical insurance contracts for the protection and benefit of its officers and employees, and the immediate families of those officers and employees. 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. (SDCL 7-8-26)

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. (SDCL 7-8-26.1)

A board of county commissioners may elect to provide group health insurance for its officers and employees and their immediate families under a plan of self-insurance in whole or in part if that plan will cover a minimum of one hundred eligible officers and employees in that county. Two or more counties may participate in such a self-insurance plan if the plan will cover a minimum of one hundred eligible officers and employees. (SDCL 7-8-26.2)

If a county officer or employee can demonstrate to the county commission that he has a condition which will leave him uninsurable upon termination of employment with the county and he elects not to participate in the group hospital, medical, or health insurance plans authorized by §§ 7-8-26 and 7-8-26.1, the board of county commissioners may enter into individual hospital, medical, or health contracts

to provide for the protection and benefit of the officer or employee and his immediate family. The board may pay all or part of the necessary premiums for the coverage of the officer or employee and his immediate family. However, the monthly premium for an individual contract shall not exceed the monthly premium for the group plan established in the county pursuant to §§ 7-8-26 and 7-8-26.1. (SDCL 7-8-26.4)

The county commissioners may include themselves with other county employees and officials under a group hospital and medical insurance contract. (AGR 1959-60, p. 170) The county board must contract for the group insurance with just one insurance company and have one insurance plan. After the board decides the amount of coverage and the percentage of the premiums which the county will pay, they then request the different insurance companies to submit their coverage plans and amount of premiums to the county. The board then decides which company offers the best plan and enters into a contract. The employees then have a choice to join in or stay out of the group insurance plan. The county board is not authorized to circumvent a law which requires competitive bidding for a project by dividing the total cost of the project among several companies. Rather, the board should decide which company furnishes the best coverage for the lowest premium and contract with the company according to law. (AGR 1959-60, pp. 254-255)

It is the discretion of the county as to the number of companies it chooses to contract with to provide hospital and medical coverage. However, the county pays one-half of the premiums only when it has actually entered into a group contract. It cannot, for example, pay one-half of the premiums of some officers and employees in an individual insurance plan. (AGR 1959-60, p. 42-43) County funds may not be issued to pay premiums or portions of them for life insurance for county officials. (AGR 1959-60, p. 179)

Since the group hospital and medical insurance costs are made an additional function of county government, the costs are paid from budgeted county revenues. (AGR 1957-58, p. 116)

A county extension agent is not a county employee for the purpose of group medical and hospital insurance. (AGR 1957-58, pp. 149-150)

9.0015 Vital Statistics and Permits

All records and certificates required by this chapter shall be completed electronically, typewritten, or written legibly in permanent black ink. In case any certificate is not complete or not legible, the department may not file the same, but shall require the person responsible for the record to prepare a new record that is complete and legible. (SDCL 34-25-45) The register of deeds shall be the local registrar of vital records for each registration district in this state. If there is no register of deeds, the department shall designate the local registrar who shall assume the responsibilities of local registrar of vital records. No fee shall be charged by a local registrar for filing an original or amended birth record or a death or burial record or for certified copies to persons entitled thereto under § 34-25-54. Each local registrar shall appoint a deputy whose duty it shall be to act in his stead in case of the absence or disability of such local registrar. (SDCL 34-25-4.1)

9.0016 Contribution to Safety Programs

Any county of this state that has a population of thirty thousand or more, through its board of commissioners may, from its general fund, contribute to the support of a program of safety and the prevention of accidents. Such support may be, in whole or in part, to a safety council operated on any plan of membership and action as formulated by the National Safety Council. (SDCL 7-18-13)

9.0017 Home Health Services

The counties and municipalities are hereby authorized to establish a home health agency services special revenue fund. (SDCL 34-3A-1) Fees collected for reimbursable expenditures and for services to patients in their homes by public health nurses, home health aides, physical therapists, and other specialized health personnel who are employees of counties and municipalities shall be receipted into said fund. (SDCL 34-3A-2) The counties and municipalities are hereby authorized to receive the amount of fees to be charged for such services, that may be received from the patient, home health insurance benefits as provided by the Social Security Act and any amendments thereto, State Department of Social Services, other insurance programs, governmental agencies, private health and welfare agencies and associations. (SDCL 34-3A-3) Expenditures from such fund shall be used to assist in paying the salaries and expenses of such employees and all other reimbursable expenditures may be made without any additional appropriation authorization by the governing body. (SDCL 34-3A-4)

The board of county commissioners or the governing bodies of a municipality may contract for health services with any public or private agency and expend funds for such purpose from the special revenue fund authorized by § 34-3A-1. (SDCL 34-3A-5)

In lieu of, or in addition to, the expenditures authorized from the special revenue fund pursuant to § 34-3A-5, such board of county commissioners or the governing bodies of municipalities may appropriate out of the general fund of their respective counties or municipalities for the purposes of § 34-3A-5. (SDCL 34-3A-6)

9.0018 Drug Education Programs

The boards of county commissioners of the several counties and the governing bodies of municipalities are authorized to:(1) Create and operate programs for alerting area citizens to the present incidence, causes and nature of misuse and abuse of drugs, including alcohol, and substances and their effects;(2) Create and apply broad, coordinated, and effective remedial programs to reduce the drug misuse and abuse problem, including preventive and rehabilitative countermeasures to the drug misuse and abuse problem;(3) Institute both preventive and rehabilitative community programs among youth and adult groups; and(4) Contribute sums of money annually to establish, promote, and support nonprofit organizations engaged in preventive or rehabilitative community programs among youth or adult groups. (SDCL 34-3B-1) For the purpose of carrying out this chapter, the boards of county commissioners shall appropriate money out of the general fund of their respective counties and the governing bodies of municipalities may appropriate money out of the general fund of their respective municipalities. (SDCL 34-3B-3) Payments to nonprofit organizations engaged in programs described in § 34-3B-1 shall be based on programs previously approved by the governing boards. Complete records on all their activities and a certified audit of these records shall be submitted to the governing boards upon demand and at the close of each fiscal period. (SDCL 34-3B-4)

9.0019 Air Pollution control

Each municipality and each county may with the approval of the Board of Minerals and Environment establish and thereafter administer programs within its jurisdiction an air pollution control program which provides by ordinance or local law for requirements as strict or more strict and more extensive than those imposed by this chapter and regulations issued there under, or, upon prior review and approval by the board, less restrictive requirements. The air pollution control jurisdiction authorized pursuant to this section shall apply to state facilities located within the boundaries of the municipality or county in the event the municipality or county has been found to be in violation of National Ambient Air Quality Standards. (SDCL 34A-1-36) Any municipality or county may administer all or part of its air pollution control program in cooperation with one or more municipalities or counties of this state or of

other states provided that the requirements of other statutes relating to cooperative agreements are met. (SDCL 34A-1-37)

9.0020 Solid Waste Disposal

The board of county commissioners in each county of the state is authorized to plan, organize, and provide a solid wastes management system to adequately handle solid wastes generated or existing within the boundaries of such county. (SDCL 7-33-1) The board of county commissioners of a county may enter into agreements with other counties, one or more municipalities, townships, governmental agencies, with private persons, trusts, or with any combination thereof to provide a solid wastes management system for all participating counties, an individual county, or any portion thereof. (SDCL 7-33-2) The board of county commissioners is authorized to contract for the lease or purchase of land, facilities and vehicles for the operation of a solid wastes management system either for the county or as a party to a regional solid wastes authority. (SDCL 7-33-3) The board of county commissioners shall have the authority to levy and collect such taxes, fees, or charges, and require such licenses as may be appropriate to discharge their responsibility for a solid wastes management system or any portion thereof. (SDCL 7-33-4) The board of county commissioners shall be authorized to accept, receive, and administer grants or other funds or gifts from private and public agencies, including the federal government, for the development and operation of a solid wastes management system. (SDCL 7-33-5) The board of county commissioners of a county may, in accordance with the provisions of § 34A-6-40 and 34A-6-63.1, establish policies and requirements for the operation of solid waste or recycling facilities and systems and the sale or transfer of solid waste materials or by-products or recyclable materials. (SDCL 7-33-6)

In an effort to coordinate a statewide program of solid waste management, to provide for an appropriate distribution of responsibilities among the state and local units of government, and to facilitate cooperation with federal, state and local agencies responsible for the prevention, control or abatement of air, water and land pollution, the South Dakota Legislature enacted SDCL Chapter 34A-6.

Any application to the board of minerals and environment for a permit for a facility for the transportation, storage or disposal of solid waste or medical waste pursuant to SDCL 34A-6 shall include a resolution by the governing body of the county in which the facility is to be located approving the proposed facility. Approval must be given by the county within no more than six months before the issuance of the permit by the board of minerals and environment shall be considered as a condition for the permit issuance.

The board of county commissioners in each county of the state shall plan, initiate, and provide a solid waste management system to adequately handle solid wastes generated or existing within the boundaries of the county. The plan shall be submitted to the Board of Minerals and Environment for approval on a specified date. (SDCL 34A-6-17) Any county may grant and regulate franchises for the purpose of collection and disposal of solid waste, as solid waste is defined by subdivision 34A-6-1.3(17), in those parts of the county not subject to the jurisdiction of a municipality. Such franchises may be granted for a part of the county. No franchise is valid unless approved in an election by a majority of the electors voting on the question. Such election shall be held in that part of the county affected by the franchise. Such franchise may not be granted for a longer period than ten years. (SDCL 34A-6-18) The board of county commissioners of a county may enter into agreements with other counties, one or more municipalities, townships, governmental agencies, with private persons, trusts, or with any combination thereof to provide a solid waste management system for all participating counties, an individual county, or any portion thereof. (SDCL 34A-6-20) By agreement or contractual arrangement the

board of county commissioners may assume responsibility for solid wastes generated within municipalities whether within the county or other counties. (SDCL 34A-6-21) Municipalities and counties may combine to grant and regulate franchises for the purposes outlined in §§ 34A-6-18 and 34A-6-24. Franchises granted under this section must be approved by the electors in the same manner as provided by § 34A-6-18. In case the electors of any political subdivision cooperating under this section reject the franchise, the franchise shall be granted for those subdivisions approving it. (SDCL 34A-6-27)

The governing body of a municipality, county, or subdivision may levy and collect such fees and charges and require such licenses as are necessary to discharge their responsibility, and such fees, charges, and licenses shall be based on a fee schedule set forth in an ordinance or resolution. In the event any fee, charge, or license so levied, other than a municipal garbage collection fee, becomes delinquent, it may be certified to the county treasurer and shall be collected by the county treasurer in the following year as a condition precedent to payment of the real property tax on the lot or parcel of land with respect to which the fee, charge, or license was levied. The chief fiscal officer of a municipality shall collect a delinquent municipal garbage collection fee as a condition precedent to the payment of any water, sewer, utility, or other charge collected by the municipality. (SDCL 34A-6-29)

Administration of Poor Relief

9.101 Responsibility for Poor Relief

Every county shall relieve and support all poor and indigent persons who have established residency therein, as that term is defined in §§ 28-13-2 to 28-13-16.2, inclusive, and who have made application to the county, whenever they shall stand in need. Each board of county commissioners may raise money by taxation for the support and employment of the poor. If a person is receiving benefits from the Department of Social Services, the board of county commissioners may determine if he is eligible for county relief. (SDCL 28-13-1) Every county may expend moneys raised by taxation for the support and employment of the poor for the purpose of sponsoring federal work projects now, or hereafter, established by work relief agencies of the United States, whether now existing or hereafter established by the United States, for the purpose of providing support and employment for poor and indigent persons and may enter into agreements therefore with such federal agencies. The provisions of this section shall not authorize the construction of public buildings or additions thereto in conjunction with federal agencies. (SDCL 28-13-21)

For the purposes of this chapter, an indigent or poor person is any person who does not have sufficient money, credit, or property to be self-supporting; who has no one to look to who is legally required to provide support; or who is unable to be self-supporting through work because of illness or injury. In applying this definition, each county shall establish reasonable eligibility standards for county poor relief. (SDCL 28-13-1.1) A county in establishing eligibility standards for county poor relief shall take into consideration an applicant's total economic resources including current assets and income, sources of financial support to which the applicant is legally entitled and total economic needs. In a case involving support among family members the county shall take into consideration family size, total family economic resources, and total family economic needs. (SDCL 28-13-1.2)

9.102 Legal Residences of Needy Persons

Except as otherwise provided in this chapter, any person, in order to be entitled to assistance, shall have an established residency in the state, and in the county where the application is made. The residency shall be established by his personal presence, in a fixed and permanent abode and his intention to remain there. In determining the residency of an applicant the county commissioners may

consider the establishment of a local bank account by the applicant, the applicant's driver's license address, an automobile registration, the enrollment of applicant's children in a local school, and the applicant's voter registration; however, the absence of any of the above considerations shall not be a positive determination of non-residency. (SDCL 28-13-3) For the purposes of this chapter, children shall have the same residency as their parents, the party granted their legal custody pursuant to court order or decree, or as fixed by their guardian. (SDCL 28-13-5) For the purposes of this chapter a person's residency, when once legally established, shall continue until it is lost by establishing residency in another state or county. (SDCL 28-13-8)

The acceptance of an applicant for any type of public assistance administered by the Department of Social Services, in a county where the applicant has not established residency in accordance with § 28-13-3, shall not operate to establish a residency for the purposes of this chapter in that county. (SDCL 28-13-12)

An occupant or patient of any health care facility, licensed pursuant to the provisions of chapter 34-12, who has not otherwise established residency in accordance with § 28-13-3 in the county where such facility is situated, shall not establish residency in such county solely by virtue of becoming and remaining an occupant or patient of such facility. (SDCL 28-13-14)

Whenever any person entitled to temporary relief as a poor person shall be in any county in which he has not established residency, the commissioners thereof may, if the same is deemed advisable, grant such relief by providing the same relief as is customary in cases where persons have established residency in the state and county. The county furnishing relief shall be entitled to reimbursements from the county in which said poor person has established residency. (SDCL 28-13-38)

For the purposes of this chapter a person's residency, when once legally established, shall continue until it is lost by establishing residency in another state or county. (SDCL 28-13-8) When any county shall furnish relief to any person under the provisions of chapter 28-13, such county shall have a claim against the person so relieved for the value of such relief, which may be enforced against any property, not exempt from execution, which such person may have or later acquire. (SDCL 28-14-1) (AGR 1957-58, pp. 6-8)

Individuals who enter a private home for aged on a self-supporting basis may establish a poor relief legal settlement in the county where the home is located upon acquiring a legal voting residence, unless prevented from doing so by proper notice which states that the individual or family will not be accepted by the county as being eligible for poor relief. (AGR 1955-56, pp. 409-411)

Indigent Native Americans who have acquired a legal settlement in a county are entitled to be supported by the county as poor persons. (AGR 1949-50, pp. 73-75)

Whenever any person entitled to temporary relief as a poor person shall be in any county in which he has not established residency, the commissioners thereof may, if the same is deemed advisable, grant such relief by providing the same relief as is customary in cases where persons have established residency in the state and county. The county furnishing relief shall be entitled to reimbursements from the county in which said poor person has established residency. (SDCL 28-13-38)

If a person applies for and receives old age assistance in a county, that county is his legal residence for poor relief purposes. If the same person moves from the county and ceases to receive old age assistance for a period of one year, and has not received notice to prevent him from gaining legal residence for a period of one year, he will then gain legal residence in the county in which he applied for and received old age assistance. (AGR No. 71-14)

It shall be the duty of the board of county commissioners to publish the number of persons receiving poor relief, the amount or amounts paid, and if paid to other than the person receiving poor relief, the name of the payee, the amount thereof, and the purpose for the expenditure. (SDCL 28-13-

41) The county auditor or any other county official shall not release the name of any poor relief recipient for official publication. (SDCL 28-13-42)

9.103 County Care of the Sick

The board of county commissioners shall establish rules, not inconsistent with the laws of this state, covering the admission of persons to the county hospital provided for in § 34-8-1, and shall require every person admitted to such hospital to pay the county the cost of his care therein, all moneys so received to be credited to the county general fund. In the case of poor and indigent persons, the board shall pay the cost of the care of such persons out of the general fund. (SDCL 34-8-12)

It shall be the duty of the county commissioners, on complaint made to them that any person not an inhabitant of their county is lying sick therein or in distress, without friends or money, so that he is likely to suffer, to examine into the case of such person and grant such temporary relief as the nature of the case may require. (SDCL 28-13-37) Temporary relief has been defined as treatment and care until the patient is able to return to work or leave the county, or until the case is otherwise disposed of. (AGR 1949-50, p. 234)

Terms used in this chapter mean:(1) "Actual cost of hospitalization," the actual cost to a hospital of providing hospital services to a medically indigent person, determined by applying the ratios of costs to charges appearing on the statement of costs required in § 28-13-28 to charges at the hospital in effect at the time the hospital services are provided;(2) "Emergency hospital services," treatment in the most appropriate hospital available to meet the emergency need. The physician, physician assistant, or nurse practitioner on duty or on call at the hospital must determine whether the individual requires emergency hospital care. The need for emergency hospital care is established if the absence of emergency care is expected to result in death, additional serious jeopardy to the individual's health, serious impairment to the individual's bodily functions, or serious dysfunction of any bodily organ or part. The term does not include care for which treatment is available and routinely provided in a clinic or physician's office;(3) "Hospital," any hospital licensed as such by the state in which it is located;(4) "Household," the patient, minor children of the patient living with the patient, and anyone else living with the patient to whom the patient has the legal right to look for support;(5) "Nonemergency care," hospitalization which is medically necessary and recommended by a physician licensed under chapter 36-4 but does not require immediate care or attention;(6) "Indigent by design," an individual who meets any one of the following criteria:(a) Is able to work but has chosen not to work;(b) Is a student at a postsecondary institution who has chosen not to purchase health insurance;(c) Has failed to purchase or elect major medical health insurance or health benefits made available through an employer-based health benefit plan although the person was financially able, pursuant to § 28-13-32.11, to purchase or elect the insurance or health benefits;(d) Has failed to purchase available major medical health insurance although the individual was insurable and was financially able, pursuant to § 28-13-32.11, to purchase the insurance. For purposes of this subdivision, an individual is presumed insurable unless the individual can produce sufficient evidence to show that the individual was declined major medical insurance by an insurance company and the individual did not qualify for any guarantees of major medical insurance available through any legal or contractual right that was not exercised; or(e) Has transferred resources for purposes of establishing eligibility for medical assistance available under the provisions of this chapter. The lookback period for making this determination includes the thirty-six month period immediately prior to the onset of the individual's illness and continues through the period of time for which the individual is requesting services. (SDCL 28-13-27) Nothing in this chapter precludes a hospital and a county from entering into a reasonable and suitable arrangement, contract, or agreement for hospitalization of medically indigent persons at other rates than provided

under this chapter, or abrogates or impairs any rights or remedies of either the county or the hospital under any such arrangement, contract, or agreement. (SDCL 28-13-36) (Roane v. Hutchinson Co., 40SD 297, 167 NW 168 (1918)) (AGR 1955-56, pp. 316-317, 408-406)

9.104 County Day Care Centers

The boards of county commissioners of the several counties and the governing boards of municipalities may establish and maintain day care centers as defined in subdivision 26-6-14(3), and may contribute sums of money annually to establish, promote, and support nonprofit organizations engaged in such programs. (SDCL 26-6-18.1) For the purpose of carrying out the provisions of §§ 26-6-18.1 to 26-6-18.4, inclusive, the boards of county commissioners and the governing bodies of municipalities shall appropriate the necessary money from their general fund. (SDCL 26-6-18.3) Payments to nonprofit organizations engaged in these programs shall be based on programs previously approved by the governing boards. Complete records on all their activities and a certified audit of these records shall be submitted to the governing boards upon demand and at the close of each fiscal period. (SDCL 26-6-18.4)

9.105 Burial at County Expense

If any person shall die within any county, who shall not have money or means necessary to defray his funeral expenses, and whose relatives or friends are unable or unwilling to defray the same, it shall be the duty of the county commissioners to employ a person to provide for and superintend the burial of such deceased person. (SDCL 28-17-1) Whenever any person who is destitute and has no estate shall die within the state, and who has no one legally bound for funeral expenses, and where there is no other source to pay the cost of burial expense, the funeral expenses shall then be borne by the county in which the deceased was a resident at time of death, and if no residence can be fixed, then by the county in which death occurred. (SDCL 28-17-2) The selection of a funeral director shall be made by the next of kin, if any, otherwise by the county commissioner in whose district death occurred. In no case shall the county commissioners advertise for bids on burial of indigent poor. (SDCL 28-17-3) On county burials, the funeral director in charge shall furnish casket and outside container and conduct the funeral services in customary form, and the county shall allow the funeral director for merchandise and such services rendered a sum to be established by resolution of the board of county commissioners in such county at their organizational meeting. (SDCL 28-17-4) In addition to the burial expenses provided in § 28-17-4, the county commissioners may contract with cemeteries within the state for burial space in a cemetery and the opening and closing of the grave. (SDCL 28-17-5) The necessary and reasonable expenses of burial under this chapter shall be paid by the county treasurer, upon the order of such commissioners; and if the decedent shall have had an established residency according to § 28-13-3 in a county in this state different from that in which he died, the county paying such funeral expenses shall be reimbursed by the county in which the decedent had an established residency. When the person so dying shall be an honorably discharged United States soldier, sailor, marine, or aviator, the funeral shall be conducted and expenses paid as provided in chapter 33-19. (SDCL 28-17-6)

Any county may appropriate money with which to purchase lots or plots of ground in any cemetery or burial ground for the burial of any veteran as defined by § 33-17-1, or the veteran's spouse, if the veteran or the veteran's spouse had a legal residence within the county at the time of his or her death. SDCL 33-19-8) Each board of county commissioners of each county of this state may, as soon as the money has been appropriated, purchase not more than ten burial plots and provide for the perpetual care of the plots. The cost of the plots with perpetual care may not exceed seventy-five

dollars per plot. The title to the burial plots is vested in the State of South Dakota, and permits for burial in the plots shall be issued by the county auditor of the respective county. (SDCL 33-19-9)

Any county may pay burial expense of persons described in § 33-19-8 not in excess of one hundred dollars for any such burial if the person dies in the county or has legal residence in the county at the time of death and if the relatives or friends of the deceased furnish affidavits acceptable to a circuit judge for the county that the estate of the decedent is not sufficient to defray the funeral expense. (SDCL 33-19-10)

If a headstone is provided by the United States government for the purpose of marking the grave of a veteran who had been a resident of South Dakota for one year preceding entrance into military service or preceding death or if a memorial headstone or marker is provided by the United States government to commemorate any member of the armed forces of the United States dying in the service, whose remains have not been recovered or identified or were buried at sea, the veterans' service officer or field officer shall cause the headstone or memorial headstone or marker to be erected. The expense of erecting the headstone or memorial headstone or marker shall be paid by the state and may not exceed one hundred dollars. No payment for the expense is allowed unless a claim is filed or presented to the Division of Veterans Affairs within one year subsequent to the date the headstone or memorial headstone or marker is erected. (SDCL 33-19-5)

Whenever any person who is destitute and has no estate shall die within the state, and who has no one legally bound for funeral expenses, and where there is no other source to pay the cost of burial expense, the funeral expenses shall then be borne by the county in which the deceased was a resident at time of death, and if no residence can be fixed, then by the county in which death occurred. (SDCL 28-17-2) (AGR 1959-60, pp. 311-312)

9.106 Administration of Poor Relief

The county commissioners in each county are responsible for the care and relief of all poor persons in the county as provided by this chapter as long as those persons remain eligible. The commissioners may designate a county official to assist in the coordination of poor relief information with other counties. (SDCL 28-13-16) Also see SDCL 10-12-9.

If any person shall suppose that he is entitled to the benefit of the laws for the relief of the poor, and the commissioners of the county in which he applies for assistance shall refuse to give such person the benefit thereof, upon application of such person a judge of the circuit court having jurisdiction over such county may, if he shall think proper, direct such commissioners to provide assistance pursuant to this chapter to such person. (SDCL 28-13-40)

The board of county commissioners may, except for their obligations under §§ 28-13-37 and 28-13-38, impose upon applicants for assistance such a reasonable waiting period as they may determine to be necessary in order to adequately investigate and consider all factors relevant to determining whether an applicant has established residency in good faith in the state, and in the county where the application is made. (SDCL 28-13-16.1)

Any applicant for assistance who knowingly makes any false statement, with intent to defraud, as to his financial status or other required information, or in any way intentionally deceives any county commissioner, or any welfare worker employed pursuant to § 28-13-22, in order to receive assistance, shall be guilty of a Class 1 misdemeanor. (SDCL 28-13-16.2)

For the purpose of aiding the investigation of an applicant's residency conducted pursuant to § 28-13-3, each county auditor shall make the information recorded pursuant to § 28-14-7 available upon request to any county commissioner, county auditor, or welfare worker employed pursuant to § 28-13-22. (SDCL 28-13-18)

Whenever financial assistance is requested under the provisions of this chapter, the board of county commissioners may require the applicant to perform labor or other services of a public nature commensurate with the amount of aid desired or granted. In addition, the board may require the recipient of assistance to enter into a contract for the repayment of all or part of the assistance he receives. (SDCL 28-13-20)

Any person who without just cause refuses to report for work to which he has been assigned by the board of county commissioners, or by a welfare worker employed pursuant to § 28-13-22, shall thereupon become ineligible for further assistance under this chapter until such work is commenced. (SDCL 28-13-20.2)

At any time before or after making an application for poor relief, an applicant may not assign or transfer any property for the purpose of becoming eligible for assistance under this chapter. Violation of this section is a Class 1 misdemeanor. (SDCL 28-13-43)

The board of county commissioners may establish a special emergency county welfare account upon which the county welfare departments may make immediate, direct cash withdrawals up to one hundred dollars a month to meet special emergency requirements of said county welfare departments. The special account shall be deposited with a local bank and subject to withdrawals upon the signatures of county officials designated and authorized to do the same by the board of county commissioners. The board shall from time to time appropriate money from the general fund to this special account. (SDCL 28-13-19)

9.107 Discontinuance of County Home for the Poor

Statute Repealed

9.108 Care of Poor Persons in Absence of County Home

The board of county commissioners may in its discretion allow and pay to poor persons who may become county charges and who are of mature years and sound mind, and who from their general character will probably be benefited thereby, and also to the parents of mentally retarded children and children otherwise helpless and requiring the attention of their parents, and who are unable to provide for such children themselves, such annual allowance as will not exceed the charge of their maintenance in the ordinary mode, such board taking the usual amount of charges in like cases as the rule for making such allowance. (SDCL 28-13-23)

9.109 County Physician for Services to Poor Persons

Each board of county commissioners may annually employ a duly qualified physician and surgeon registered and licensed in the healing arts, as the term "healing arts" is defined by chapter 36-2, as county physician, whose duty it shall be to attend and render his services as physician and surgeon to poor persons of the county. The board of county commissioners shall fix the annual salary to be paid and which shall be paid monthly with warrants of the county auditor upon proper verified vouchers approved by the county commissioners. It shall be the duty of such physician and surgeon to file with the county auditor not later than the first day of each month a report disclosing the patients treated by him, the value and kind of services rendered and the name and address of the person so treated within the previous thirty days. (SDCL 28-13-26)

9.110 Poor Relief Lien

If any county pays for the care, support, or burial expenses of any poor person as defined in § 28-14-3, the county has a lien upon all the property, both real and personal, including joint tenancy and homestead interests belonging to the poor person, or to be thereafter acquired by the poor person, or in which the poor person has any interest. The lien shall be for all sums of money expended by the county. A lien for expenses paid by a county and reimbursed under the catastrophic county poor relief fund established in chapter 28-13A, shall be for the full amount of the medical expenses paid by the county before reimbursement was made from the catastrophic fund. A lien shall become effective immediately upon payment by any county, to or for the benefit of such poor person, and filing with the register of deeds office for recording and indexing. Each additional payment made by the county for such poor person shall be added to the amount of the lien. If a county receives a reimbursement from the catastrophic county poor relief fund and the county subsequently collects all or part of the claims from either the individual or a third-party source, the county shall repay a percentage of the collection to the catastrophic county poor relief fund. The percentage of the collection repaid shall equal the percentage of the claim that the catastrophic county poor relief fund reimbursement represents. (SDCL 28-14-5) (SDCL 28-14-5 to 28-14-18) (AGR 1951-52, pp. 457-458; 1955-56, pp. 161-163)

Since the lien statute is silent as to any lien arising from the granting of aid to the blind, no lien attaches either to the property of the recipient of the aid or to that of a parent or guardian of the grantee. (SDCL 28-14-5) (AGR 1959-60, p. 17)

There is no statutory authority for the county commissioners to pay mortgages on county poor aid lien property and thereby protect their county poor aid liens. (AGR 1955-56, pp. 200-201) The possibility of foreclosure by the county should be investigated and instances where private parties are in the process of foreclosing private mortgages.

The county board may not legally refund money paid by mistake and voluntarily paid to satisfy a poor relief lien if the mistake is due to negligence on the part of the person satisfying the lien and not due to some official action of the county officers. (AGR 1949-50, pp. 313-314)

When the county at tax resale sells land acquired through tax deed proceedings and there is a state's old age assistance lien against the property, the county is obligated to pay over to the state the amount of the lien which is in excess of the county's lien and old age assistance lie, at the discretion of the county board and the State department of social series, the excess over taxes may be pro-rated in compromise and settlement of their respective liens. (AGR 1957-58, pp. 76-79)

9.111 Foreclosure and Sale of Poor Relief Lien Property

The board of county commissioners shall have authority to enter the appearance of the county in any proceeding affecting the property on which the state claims a lien or charge pursuant to §§ 28-14-5 and 28-14-6, to prosecute or defend in any such proceedings to institute probate proceedings as a creditor of deceased persons, and either in the course of or in the absence of and apart from any action or proceeding enter into any stipulation, compromise, settlements, or other agreements or arrangements in respect to such lien or charge affecting such property as may seem wise, and to execute and deliver any such stipulation, modification, quitclaims, releases, partial releases, discharges, extensions, agreements, satisfactions, partial satisfactions, or subordination or other contract or stipulation or agreement which the interest of the parties or the circumstances of the case may make advisable. (SDCL 28-14-15) All satisfactions, partial satisfactions, releases, and partial releases so executed shall be filed for record in the office of the register of deeds of the respective county or counties in which is located the real property so released from such lien. Such filing and recording of such partial satisfaction, satisfactions, releases, or partial releases shall be done without any fee being charged or paid therefore. The register of deeds shall also note the fact of such satisfactions, partial satisfaction, or release or partial release upon the margin of any record of such lien in that office. (SDCL 28-14-18) (AGR 1955-56, pp. 88-89)

A poor relief lien is a perpetual lien which may, under specified conditions, be enforced regardless of its age. (SDCL 28-14-5) (AGR 1955-56, pp. 70-71)

Any lien established by virtue of these statutes may be foreclosed by action in the name of the county to satisfy the amount of the lien, together with interest, cost, and expenses of foreclosure. Such foreclosure shall not be commenced until one year after the last payment to or for the benefit of the poor person during the lifetime of the poor person or until after the death of the poor person. Such lien shall not be enforced against the homestead of the poor person during his or her lifetime or while occupied as a homestead by the surviving spouse or minor children, except upon alienation. (SDCL 28-14-11)

All property acquired by the county under this chapter shall in the case of personal property be offered for sale by the board of county commissioners of each county by advertising for bids upon two weeks' notice, published in a legal newspaper within the county, and if such board of county commissioners deem it for the best interests of the county, they shall sell the same to the highest bidder for cash. (SDCL 28-14-12)

In all cases of real property acquired under these statutes, the board of county commissioners is authorized to rent or sell the same in the same manner as provided for other real property acquired by the county through foreclosure of school fund mortgages, and all moneys received thereby shall be credited to the respective funds from which the money was drawn to establish the lien. (SDCL 28-14-13)

9.112 Compromise or Settlement of Poor Relief Liens

The board of county commissioners shall have authority to enter the appearance of the county in any proceeding affecting the property on which the state claims a lien or charge pursuant to §§ 28-14-5 and 28-14-6, to prosecute or defend in any such proceedings to institute probate proceedings as a creditor of deceased persons, and either in the course of or in the absence of and apart from any action or proceeding enter into any stipulation, compromise, settlements, or other agreements or arrangements in respect to such lien or charge affecting such property as may seem wise, and to execute and deliver any such stipulation, modification, quitclaims, releases, partial releases, discharges, extensions, agreements, satisfactions, partial satisfactions, or subordination or other contract or stipulation or agreement which the interest of the parties or the circumstances of the case may make advisable. (SDCL 28-14-15) In the event any person having any interest in any property against which a

lien has been established as provided by this chapter desires to avail himself of the benefits of § 28-14-10 or of §§ 28-14-14 to 28-14-18, inclusive, he may file with the county auditor in the county in which such lien originated a written application therefore, signed and sworn to by the applicant in which shall be set forth the facts upon which such application is based. (SDCL 28-14-16) Any such application shall be presented to the board of county commissioners of said county at its next regular meeting. If it appears to the satisfaction of the board that it will be to the best interest of the county and the circumstances of the case are such that the same is advisable, the board may, by proper resolution duly adopted authorize such stipulation, modification, quitclaim, release, partial release, discharge, extension, agreement, satisfaction, partial satisfaction, or subordination or other contract or agreement which will affect the purpose desired. Upon such resolution becoming effective and the payment of any sum specified, the chairman of the board of county commissioners and the county auditor shall be authorized to execute any such instrument on behalf of the county. (SDCL 28-14-17) All satisfactions, partial satisfactions, releases, and partial releases so executed shall be filed for record in the office of the register of deeds of the respective county or counties in which is located the real property so released from such lien. Such filing and recording of such partial satisfaction, satisfactions, releases, or partial releases shall be done without any fee being charged or paid therefore. The register of deeds shall also note the fact of such satisfactions, partial satisfaction, or release or partial release upon the margin of any record of such lien in that office. (SDCL 28-14-18)

In the event the record of a lien shall have been made under the provisions of this chapter whereby the name of the person or persons for whose benefit any payment shall have been made, or the name of any person or persons against whose property a lien may appear to have been created, shall be shown or stated by mistake or incorrectly or in such manner as not to be easily identified as the owner or owners of property, or the amount of such lien be incorrectly stated or recorded, any person whose interests are adversely affected thereby may apply to the board of county commissioners for correction of the record to conform to the facts. The board shall have authority to grant the relief sought and to direct the correction of the record accordingly. (SDCL 28-14-10)

9.113 Child and Mother Welfare

A county which paid the hospital and doctor bills incurred during the pregnancy and confinement of a mother may institute proceedings, within the time limitation of two years, to recover the costs from the father of an illegitimate child. The uniform illegitimacy law provides the procedure and authorizes suit against the father, with the mother named as a part defendant, by the authorities charged with support to recover reasonable expense. (AGR 1955-56, p. 79)

9.114 Public Assistance

Repealed statute SDCL 30-27

9.115 Catastrophic County Poor Relief Fund

28-13A-1 Establishment--Administration--Expenditures.
28-13A-2 Board established--Appointment and term of members--Expenses.
28-13A-3 Executed.
28-13A-4 Rules for participation by additional counties, withdrawal and administration.
28-13A-5 Discontinuance--Disposition of fund.
28-13A-6 Reimbursement from fund--Eligibility--Application.
28-13A-7 Amount of reimbursement.
28-13A-8 Annual report of disbursements--Assessment and payment of shares by counties.

28-13A-9 Computation of counties' shares.
28-13A-10 Supplemental assessments to avoid depletion.
28-13A-11 Acceptance of funds from other sources.

Parks and Recreational Facilities

9.201 Establishment of County Parks

If property described in § 41-18-1 or any portion thereof is offered to the county as a gift for the purpose described therein, the commissioners may without the necessity of a petition of freehold voters as provided for in § 41-18-3, accept such gift by resolution passed at a regular meeting or special meeting called for that purpose. In such case no notice of such meeting or resolution accepting such gift need be published. (SDCL 41-18-2) No authority exists, however, to dedicate or donate tax deed lands for park purposed as such land must be appraised and sold at tax resale with the proceeds pro-rated among the taxing districts. (AGR 1949-50, p. 417)

If three hundred or more freehold voters of any county file with the county auditor a petition setting forth that certain real property, therein described, within the county is desirable for the purposes of a public park and that it would be to the benefit of the public that the property be acquired for such purpose, the auditor shall file the petition and shall fix a day for hearing the petition by the county commissioners, not less than twenty nor more than forty days from the filing. Upon the date set for the hearing, the county commissioners shall hear all parties in favor of and against the granting of the petition. (SDCL 41-18-3) If the county commissioners are satisfied that it is in the best interest of the public that property described in a petition under § 41-18-3, or any part of the property, is to be acquired for the purpose of a public park, the commission shall cause an accurate survey to be made by a registered land surveyor and a plat to be made and filed in the office of the register of deeds. The commission shall proceed to acquire the property, if it is not necessary to borrow the money for acquiring the property, as provided in §§ 41-18-11 to 41-18-15, inclusive. (SDCL 41-18-5)

9.202 Acquisition of Land Surrounding Bodies of Water for Park Purposes

If it is determined advisable as provided in this chapter to construct or create any body of water within any county park, the board of county commissioners may acquire by the same method as provided in this chapter an amount or quantity of land surrounding or adjoining the body of water as the board deems advisable. The board may use the land for park purposes or sell the land or any portion of the land as provided in §§ 41-18-18 to 41-18-23, inclusive. (SDCL 41-18-17)

9.203 Sale of Park Land Surrounding Lakes

If the board of county commissioners decides to sell any lots or tracts surrounding any such body of water or adjoining any portion of the body of water, the commissioners shall first cause the land to be surveyed and platted into lots and blocks and streets or drives. The board of county commissioners may place such restrictions as to the use of the lots or tracts as the board may deem advisable. (SDCL 41-18-19) After a survey and platting pursuant to § 41-18-19, the board of county commissioners shall appoint three appraisers who shall appraise the lots and tracts. The proceeding for the appraisal of the lots and tracts shall be the same as provided for the appraisal of the estates of decedents, except that the appraisers shall be appointed by the board of county commissioners and the appraisal shall be filed with the county auditor of the county. (SDCL 41-18-20) After the appraisers have, pursuant to § 41-18-20,

fixed the valuation of each lot and tract, the county, through its board of county commissioners, may sell the lots and tracts or any portion of the lots and tracts for not less than the appraised value. No lot or tract may be sold by the board based on any appraisal made more than one year before the date of sale. (SDCL 41-18-21)

In the sale of lots and tracts pursuant to § 41-18-21, the board of county commissioners may designate the terms upon which the sales may be made and the rate of interest deferred payments shall bear. The board may make contracts for the sale and make conveyance if the purchaser has met the terms of the contract. However, the purchaser shall pay at least ten per centum of the sale price to the county at the time of the execution of the contract of sale, and the total purchase price, with interest on the purchase price, shall be paid within five years from the date of sale. (SDCL 41-18-22)

No dance hall may be built within one mile of a county park unless by permission of the board of county commissioners. (SDCL 41-18-25)

Any money received from the sale of lots and tracts pursuant to § 41-18-21 shall be deposited as provided in this section. If the county borrows money and issues its bonds for the creation of any county park or for creating bodies of water in the park, the money so received shall be deposited with the county treasurer in a fund known as a county park fund for the purpose of retiring the bonds upon their maturity and paying the interest on the bonds. Otherwise, the proceeds from the sale of the lots and tracts shall be deposited in the general fund. (SDCL 41-18-23)

9.204 Supervision of County Parks

The county commissioners shall have charge of the improvement and maintenance of public parks established pursuant to this chapter, the expense thereof to be paid on their order by warrants upon the park fund. (SDCL 41-18-24) Also see, SDCL 10-12-9.

9.205 Granting Easements of Park Land

The board of county commissioners may grant easements upon or transfer title to any part of any property acquired pursuant to this chapter, suitable for the creation of a body of water, to the United States government or any branch or department of the United States government in consideration of the United States government furnishing at its own expense the necessary labor and materials or any part of such labor and materials in connection with the construction or creation of such a body of water within any county park. (SDCL 41-18-18)

9.206 Public Recreation and playgrounds

Any county, municipality, or school district may operate a system of public recreation and playgrounds, and for such purpose may acquire, equip, and maintain land, buildings, or other recreational facilities, and expend its funds therefore. (SDCL 42-2-1)

Any school district delegating the operation of a recreational system to a recreation board may levy a tax of not to exceed one dollar per thousand dollars of taxable valuation on all taxable property, which levy shall be in addition to all other levies and exclusive of any levy limitations, when voted for such purpose, by a majority vote of the electors at a regular or special election. Such levy may not be authorized unless the elections are conducted in a manner as to provide separate returns and canvass of votes for rural and urban populations, where rural property would be subject thereto, and the issue carries in both areas. A county delegating the operation of a recreational system to a recreation board shall appropriate the required revenue from the county general fund. (SDCL 42-2-5)

Any recreation board created pursuant to § 42-2-2 or any public corporation operating such recreation system may conduct its activities on:(1) Property under its custody and management;(2)

Other public property, under custody of another public corporation or board, with the consent of such corporation or board;(3) Private property with consent of the owner. (SDCL 42-2-3) Any public corporation or board operating a recreational system pursuant to this chapter may accept gifts or bequests for the benefit of such recreational service and may employ supervisors and directors of recreational work. (SDCL 42-2-4) This authorization does not allow the commissioners to donate the use of county machinery, funds and the like, to a city for use in the construction of municipal recreational facilities such as a swimming pool. (AGR 1949-50, p. 153)

9.207 Cooperation with Municipalities and the Department of Game, Fish and Parks

The boards of county commissioners of the several counties of this state or the governing body of any municipality therein may cooperate with the Department of Game, Fish and Parks, or with each other, in the acquisition, development, and maintenance of parks and recreation areas within their respective counties or adjacent to their respective municipalities, and are hereby empowered to purchase land, equipment, and materials and to hire services and labor in order to effectuate such cooperation. (SDCL 42-2-10) For the purpose of carrying out the provisions of § 42-2-10, the board of county commissioners or the municipal governing body may appropriate out of their general fund a sum not to exceed five thousand dollars per year. (SDCL 42-2-11)

Emergency Services

9.301 Ambulance Districts

34-11A-1 Petition by voters or resolution by county commissioners for establishment of district.
34-11A-2 Requirement for inclusion of municipality in district.
34-11A-3 Contents of petition or resolution.
34-11A-4 Certification of petition--Designation of time and place for hearing.
34-11A-5 Two or more counties in proposed district--Procedure.
34-11A-6 Notice of hearing.
34-11A-7 Conduct of hearing--Order and filing of determination.
34-11A-8 Conduct of election.
34-11A-9 to 34-11A-11. Repealed.

Permanent organization shall be effected by the election of a board of directors consisting of not less than five residents of the district. No employee of the ambulance district may serve as a director. (SDCL 34-11A-12) Upon compliance with the provisions of this chapter relating to organization and upon compliance with chapter 6-10, the district under its designated name shall be and constitute a body politic and corporate. (SDCL 34-11A-15)

The board of directors has the following general powers: (1) To determine upon a general ambulance service program for the district;(2) To manage and conduct the business affairs of the district;(3) To make and execute contracts in the name of and on behalf of the district;(4) To purchase or lease such ambulance equipment, supplies, and other real or personal property as may be necessary to carry out the ambulance service program of the district;(5) To incur indebtedness on behalf of the district within the limits prescribed by § 34-11A-24, and to authorize the issuance of evidences of the indebtedness permitted under this subdivision, and to pledge any real or personal property owned or acquired by the district as security;(6) To organize, establish, equip, maintain, and

supervise an ambulance service to serve the district;(7) Generally to perform all acts necessary to fully carry out the purposes of this chapter; and(8) To levy a tax and a special assessment as provided by this chapter. (SDCL 34-11A-16)

A capital outlay fund for ambulance districts is provided by law to meet expenditures of three hundred dollars or more which result in the acquisition of or additions to real property, plant or equipment.

Chapter 10
Finance and Taxation

General Finance

10.001 Importance of County Finance

Numerous state laws in South Dakota pertain to the financial administration of county affairs. As the statutory provisions are often quite complicated and seemingly contradictory, the county commissioners should seek legal advice and exercise a great deal of caution when confronted with the fiscal phase of count administration.

10.002 Appropriation for more than One Year

In all cases where appropriations of money have heretofore or may hereafter be made for periods longer than one year, it shall be unlawful for the person or persons whose duty it is to expend such appropriation to audit, expend, or contract to pay more money in any one year than a pro rata share thereof; that is, the expenditures for one year shall never exceed the proportion which one year of time bears to the whole time unless otherwise expressly provided. (SDCL 7-21-29)

10.003 Transfer of Funds

Budgeted funds may not ordinarily be transferred. As an illustration, money cannot be transferred from the Custer Tuberculosis Fund or the special poor relief fund to the county general fund by the county commissioners. These two funds are appropriated for the relief of those afflicted with tuberculosis and relief of the poor and are special budget funds. The county commissioners may transfer surplus funds only from certain special funds. (AGR 1953-54, pp. 217-218; 1959-60, p. 234)

Whenever moneys shall have been actually provided for any funds of the county by a levy of taxes and such moneys shall not have been actually collected and covered into the county treasury but concerning the receipt of which moneys there can be no question, the board of county commissioners is authorized, by a unanimous vote, to anticipate the receipt of such moneys into such fund by drawing temporarily upon the moneys in any other fund of the county for which there shall not be immediate use. Any fund temporarily depleted by virtue of the foregoing provision shall be fully restored within nine months after a draft upon the same for the benefit of another fund shall have been made, and the moneys coming into the latter fund shall first be used to restore such depletion. The board shall provide, at the time of making such withdrawal, for reimbursing the fund from which moneys are thus temporarily withdrawn. (SDCL 7-21-34)

Whenever there remains in the treasury of any county an unexpended balance of any special fund, and all claims against such fund have been fully paid, and the purpose for which it was created has been fully sub served, and there remains no further use for such balance for the purpose for which it was created, it shall be lawful for the board of county commissioners to transfer such balance to any other fund of the county or subdivision to which such balance belongs. (SDCL 7-21-49) The so-called budget funds enumerated in the budget statute are not special funds or fund surpluses which are transferable. The balance in a so-called budget fund at the end of the fiscal year is not a surplus but merely an unexpended balance. It is used and considered as revenue in making levies to cover expenditures in the next budget. (AGR 1947-48, pp. 87-88; 1953-54, pp. 217-218)

For transfer of funds in the county treasury and for the limitation on fund transfers. A county board is not authorized to transfer Federal Revenue Sharing funds to a school district. (AGR 78-27)

10.004 Settlements Between County Officers and the County Board

All treasurers, sheriffs, clerks, constables, and other officers chargeable with money belonging to any county shall render their accounts to and settle with the board of county commissioners at the time required by law and pay into the county treasury any balance which may be due the county, take duplicate receipts therefore, and deposit one of the same with the county auditor within five days thereafter. (SDCL 7-23-6)

10.005 Reward for Criminals

The county commissioners of any county in this state may offer a standing reward of not more than five thousand dollars for evidence leading to the arrest and conviction of any person or persons guilty of any felony under the laws of this state. They may also in their discretion offer special rewards in reasonable amounts for the purpose of securing the arrest and conviction of any person or persons charged with a felony in any particular case. (SDCL 7-8-20.1)

10.006 Cooperation with Federal Agencies

Authority exists for the county board to authorize certain expenditures of funds in cooperation with federal agencies. County funds can be used to cooperate with those federal agencies whose activities are related to those which the county is obligated to perform. (AGR 1945-46, pp. 18-19) The cooperation with federal agencies is permissive and subject to the discretion of the board. (AGR 1941-42, pp. 116-117)

10.007 Federal Funds for Taxing Subdivisions

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. (SDCL 4-3-17)

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 4-3-18)

10.008 Use of Tax Funds for Abortions

No funds of the State of South Dakota or any agency, county, municipality, or any other political subdivision thereof and no federal funds passing through the state treasury or any agency of the State of South Dakota, county, municipality, or any other political subdivision thereof, shall be authorized or paid to or on behalf of any person or entity for or in connection with any abortion that is not necessary for the preservation of the life of the person upon whom the abortion is performed. (SDCL 28-6-4.5)

10.009 Economic Development Finance Authority

Terms used in this chapter mean:(1) "Authority," the South Dakota Economic Development Finance Authority created by this chapter;(2) "Board," the board of directors of the authority. 9SDCL 1-16B-1)

10.0010 Payments in Lieu of Federal Taxes

The county auditor shall distribute federal and state payments in lieu of tax proceeds in the same manner as taxes are distributed. (SDCL 5-11-6)

County Budget

10.101 Duty to prepare and Adopt Budget

Terms used in this title, unless the context otherwise plainly requires, are defined as follows:(1) "Institutions and agencies," when used in connection with a county, all subdivisions and departments of a county which are under the supervision or control of the board of county commissioners;(2) "Fiscal year," the twelve months period ending on the thirty-first day of December, each year;(3) "Current fiscal year," the then existing fiscal year;(4) "Next fiscal year" or "following fiscal year," the fiscal year following the fiscal year in which the budget is adopted and levies made. (SDCL 7-21-1) It shall be the duty of the board of county commissioners of each and every county to prepare and adopt an annual budget of all of the contemplated expenditures and revenues of the county and all of its institutions and agencies for each fiscal year, save and except so much of such contemplated expenditures as are for the making or maintenance of special improvements. (SDCL 7-21-2)

10.102 Provisional Budget

From the estimates of revenues and expenditures made as provided for in § 7-21-3, and from such other information as may be required and obtained by the board of county commissioners, the board of each county must, between the fifteenth and thirtieth days of July in each year, make, prepare, and file in the office of the county auditor a provisional budget, for the following fiscal year. (SDCL 7-21-5) The provisional budget required by § 7-21-5 shall contain:(1) A detailed statement of the amount of revenues likely to be received from each and every source during the following fiscal year, the amount of revenue received from each and every source during the current fiscal year, and the estimated unexpended balance of money remaining in each fund at the close of the current fiscal year, together with an estimate of all debts and liabilities incurred or created during such fiscal year, and payable out of each of such funds, but remaining unpaid at the close of the fiscal year;(2) The respective amounts proposed to be appropriated for expenditures for county purposes or its officers or departments or agencies thereof, during the following fiscal year. (SDCL 7-21-6)

In preparing the provisional budget as provided by § 7-21-6 the board of county commissioners may include in the budget a line item for contingencies. The line item shall be included in the annual budget adopted pursuant to § 7-21-12 and shall not exceed five percent of the total county budget. The amount to be budgeted for the contingency shall be included in the appropriation for the county commissioners out of general fund revenues. (SDCL 7-21-6.1) No expenditures shall be charged to the line item authorized for by § 7-21-6.1, but such appropriated amount may be transferred, by resolution of the board, to any other appropriation in which insufficient amounts were provided or for items for which no appropriation was provided. When transfers are made from the contingency budget to other appropriations, whose revenue is provided by other than general fund revenues, a transfer of fund balances may be made from the county general fund to such other fund in the amount of the budget

transfer. (SDCL 7-21-32.2) Any unused balance in the contingency budget shall revert at the close of the year and shall not be accumulated. (SDCL 7-21-44.1)

10.103 Hearing on Provisional Budget

After the provisional budget has been filed in the office of the county auditor, the board of county commissioners shall publish a notice once a week for two successive weeks in the official newspapers of the county. The last notice shall be published before the first Tuesday in September, and the notice shall state where and when the board will meet. The board shall meet on the first Tuesday in September for the purpose of considering the budget and the various estimates, items, schedules, amounts, appropriations, and matters contained in the provisional budget. If the board meets prior to the first Tuesday in September for such purpose, the board shall designate certain days in the minutes of the board and the notice. However, the board shall also hold the hearing required on the first Tuesday in September. It shall also be stated in the notice that at any meeting of the board held for the purpose of considering the budget, any interested person may appear, either in person or by representative, and be heard and given an opportunity for a full and complete discussion of all the purposes, objects, items, schedules, appropriations, amounts, estimates, and matters set forth and contained in the provisional budget. (SDCL 7-21-8) With the first notice published pursuant to § 7-21-8, the text of the provisional budget shall also be published. The text shall include each major revenue source and expenditure classified by function, sub function and activity as defined by the auditor general. (SDCL 7-21-8.1) At the time and place designated in the notice required by § 7-21-8, the board shall meet for the purpose of considering the provisional budget. The board may adjourn from day to day for further consideration. The board's minutes shall include the day and hour to which each meeting is adjourned. At such meetings any person interested in the provisional budget may appear, either in person or by representative, and shall be permitted to fully discuss the provisional budget and all of the purposes, objects, items, schedules, appropriations, amounts, estimates, and matters contained in the provisional budget. All consideration and hearings on the provisional budget shall be fully concluded by October first of each year. (SDCL 7-21-9)

At any meeting held pursuant to § 7-21-9 and during the consideration of the provisional budget by the board, the board may eliminate, amend, correct, change, or alter any of the purposes, objects, items, schedules, appropriations, amounts, estimates, or matters contained in the provisional budget in such manner as the board may deem necessary and proper. All such amendments, eliminations, corrections, changes, alterations, insertions, and additions shall be made before the final approval and adoption of the budget by the board before October first of each year. All amendments, corrections, changes, alterations, eliminations, insertions, and additions made in or to the provisional budget shall be noted on the provisional budget and shall be entered at length in the minutes of the board. (SDCL 7-21-10) After all amendments, corrections, changes, alterations, eliminations, insertions, and additions have been made in and to said provisional budget, and when the same is approved and adopted as the annual budget for the next fiscal year, the aggregate of all amounts appropriated therein and to be paid out of each fund must not exceed ninety-five per centum of the amount of all estimated revenues to be received by such fund from all sources during the next fiscal year with the unexpended balance in money remaining in such fund at the close of the current fiscal year in so far as can be estimated. (SDCL 7-21-11)

10.104 Adoption of Annual Budget

The board of county commissioners shall, before October first in each fiscal year, before finally determining or fixing any of the tax levies for the following fiscal year and after all amendments,

corrections, changes, alterations, eliminations, insertions, and additions have been made to the provisional budget, pass and adopt a resolution approving and adopting the provisional budget as the annual budget of appropriations and expenditures for the county, its institutions and agencies for the following fiscal year. The resolution may not thereafter be subject to reconsideration or revision. No amendments, corrections, changes, alterations, insertions, or additions may thereafter be made to the annual budget. Any changes in the provisional budget incorporated into the adopted annual budget shall be published in the minutes of the meeting at which the provisional budget is adopted as the annual budget. (SDCL 7-21-12) The resolution together with the budget as approved and adopted shall be signed by the members of the board, attested by the county auditor and filed in the office of the county auditor, and such budget, after approval and adoption, shall be known as the "annual budget for the fiscal year, beginning January 1st, 20____, and ending December 31st, 20____." (SDCL 7-21-13) The adoption of such annual budget shall impose a trust upon the separate amounts therein set forth and contained and appropriated for the specific uses, purposes, objects, and items therein named. (SDCL 7-21-14) The county auditor shall submit a copy of the annual budget as adopted, to the secretary of revenue together with a report of the annual levies, before the taxes are extended on the tax lists of the county. 7-21-15)

Any funds made available after the final budget is adopted by a county from state and federal grants for expenditure by the county shall be paid into the county treasury and may be expended without specific provision in the annual budget of the county. In this case the commissioners shall publish, in the official newspaper of the county, the purpose for which the expenditures were made and to whom the expenditures were made. (SDCL 7-21-20.1)

Any reimbursements received for unanticipated expenditures charged to any budget activity may be considered a supplemental budget and added to the budget activity from which it was paid. The supplement shall be recorded in the minutes of the proceedings of the board of county commissioners. (SDCL 7-21-32.1)

10.105 Supplemental Budget

In the event of an epidemic or disease or act of God, disaster, catastrophe, or accident, which results in damage to or destruction of any of the works, roads, buildings, or property of the county or any of its institutions or agencies, and the results of which have not been anticipated in the annual budget adopted for the fiscal year in which the same occur or take place, and which require the incurring of liabilities or expenditures of funds in connection with the suppression of the epidemic or disease, restoration of works, roads, buildings or property, or removing the menace above referred to, and restricted to causes where no other funds have been provided or appropriated therefore, the board may without further notice or hearing adopt a supplemental budget making and providing for an appropriation for the purpose and object, and for an amount deemed necessary, and may then incur liabilities or expend funds for such purpose, but not to exceed in the aggregate the amount specified in such supplemental budget. (SDCL 7-21-21) In the event of the passage and enactment of any law during a fiscal year and after the adoption of the annual budget for a following fiscal year, imposing some new obligation or duty upon a county, or in the event of the failure to provide by the final budget a sufficient revenue to enable the county to conduct the indispensable functions of government in any department, or to pay just obligations upon the county for the necessary conduct of the courts, or for the necessary aid and support of the poor or to discharge any duty which it is the lawful duty of the county to discharge, and of which requires the incurring of liabilities or expenditures of funds for a purpose or object for which no provision has been made in the annual budget for such fiscal year, and when such occasion arises the board must make, approve, and adopt a supplemental budget providing therein for

an appropriation for such purposes in such amount as the board may deem necessary, and such budget shall set out in detail each item for which an appropriation is made and the amount thereof. Notice of its intention to make and adopt such supplemental budget, as provided in this section, stating the purpose, object and items and the amount to be appropriated for each item, with the time and place when the same will be considered and adopted by the governing board, shall be given in such manner as the board may determine, provided that the time fixed for considering and adopting the same shall not be less than ten days from date when such notice is first given. (SDCL 7-21-22)

All of the provisions of §§ 7-21-12 to 7-21-15, inclusive, with reference to the adoption of the resolution, signing of the resolution and budget, minute entries, and filing, shall apply to any supplemental budget made and adopted under the provisions of § 7-21-21 or § 7-21-22. (SDCL 7-21-23)

The county board, for example, may adopt the special supplemental budget to assist and cooperate with a city in the purchase and ownership of firefighting equipment. (AGR 1947-48, p. 223) If a claim is one against an exhausted appropriation of the annual budget which the board refused to remedy by a supplemental budget, the claim may not lawfully be paid by the count in the succeeding fiscal years. (AGR 1947-48, p. 250)

The county board may adopt a supplemental budget in order to obtain the necessary revenue to conduct county weed control a an indispensable function of government. (AGR 1955-56, p. 326)

Warrants issued for claims allowed against budget appropriations for the previous fiscal year which have been filed before the board's first meeting in January, shall be paid out of the fund on which drawn on the presentation to the treasurer of the county, and in case of insufficient funds on hand to pay such warrants, due to delinquent taxes or other failure of revenue, then such warrants, upon presentation to the treasurer, shall be registered and the amount necessary to pay such warrants, if not paid at the time of the adoption of the annual budget, shall be included in the next annual budget. (SDCL 7-21-47)

A board of county commissioners may, by resolution, authorize the accumulation of funds for a period longer than one year for a capital outlay purpose which is otherwise authorized by law. For the purpose of this section, the term, capital outlay purpose, includes any purpose which is extraordinary in nature, exceeds the funding ability of a single-budget year, and may result in the purchase of services, materials, supplies, or equipment. The resolution is enacted if approved by a vote of sixty percent or more of the governing body and shall clearly set forth the purposes for which the funds are to be accumulated and the maximum amount that may be accumulated. The funds to be accumulated shall be expended within eighty-four months from the date of the resolution. If the specific purpose for which the funds are accumulated is no longer necessary, the funds shall revert to the fund from which the funds were originally appropriated. The amount of accumulation for a specific purpose may not exceed five million dollars. The accumulation of funds pursuant to this chapter is in addition to any accumulation of funds authorized by § 7-21-18.1. (SDCL 7-21-51)

10.106 Financial Report of Auditor

Not later than the first day in June in each year, the county auditor must make and present to the board for its use at the meeting thereof to be held in July for consideration of the annual budget for the following fiscal year a report showing:(1) The amount of all budget appropriations for each purpose and object and for each item thereof, for each office, board, bureau, department, institution, and agency for the fiscal year immediately preceding, and showing the total amount of such appropriations payable out of each particular fund;(2) The total amount expended by, through, or for each office, board, bureau, department, institution, and agency, and for each purpose and object and each item thereof, during the whole of the fiscal year immediately preceding, and showing the amount of such

expenditures paid out of each particular fund;(3) An estimate of the amount of all claims and demands on account of liabilities incurred or created during the fiscal year immediately preceding in payment for which no warrants, certificates, or orders have been issued, such estimate showing the amount of such claims and demands payable out of each particular fund;(4) The balance unpaid on each contract payable out of any budget appropriation for the fiscal year immediately preceding;(5) The amount of surplus, if any, in the appropriation for each office, board, bureau, department, institution, and agency, and in the appropriation for each purpose and object and such item thereof, for the fiscal year immediately preceding, at the close of such fiscal year, after deducting there from the estimated amount of unpaid claims and demands and all balances on contracts payable out of such appropriations;(6) The balance in money, if any, in each fund at the close of the fiscal year immediately preceding;(7) The total amount of all revenues received by, paid into, or deposited to the credit of each particular fund of the county and its institutions and agencies during the fiscal year immediately preceding, proper deductions and additions being made for all transfers made from one fund to another during such fiscal year. (SDCL 7-21-3)

All reports made by the county auditor under § 7-21-3, after being examined by the board, shall be filed in the office of the county auditor and shall be subject to inspection and examination by all interested persons during all office hours of such county auditor. (SDCL 7-21-4)

10.107 Time Limit on Appropriations

All appropriations for the expenditure of public moneys contained in the annual and supplemental budgets for such fiscal year, shall cease to be in effect at the expiration of the fiscal year for which the same were made, except as provided in § 7-21-45, and any unused balance appropriated shall be used and considered as revenue in making levy to cover expenditures in the next budget. (SDCL 7-21-44) Any unused balance in the contingency budget shall revert at the close of the year and shall not be accumulated. (SDCL 7-21-44.1)

10.108 Unpaid Claims and Incomplete Contracts

Warrants issued for claims allowed against budget appropriations for the previous fiscal year which have been filed before the board's first meeting in January, shall be paid out of the fund on which drawn on the presentation to the treasurer of the county, and in case of insufficient funds on hand to pay such warrants, due to delinquent taxes or other failure of revenue, then such warrants, upon presentation to the treasurer, shall be registered and the amount necessary to pay such warrants, if not paid at the time of the adoption of the annual budget, shall be included in the next annual budget. (SDCL 7-21-47)

The board of county commissioners may by resolution at its first meeting in January or within ten days thereafter encumber that portion of unexpended appropriations from the prior year for which legal obligations were incurred but were not paid. The resolution shall state the appropriation account and amount encumbered. The county auditor shall keep a detailed listing by payee and amount supporting such amount shown in the resolution. (SDCL 7-21-45)

10.109 Temporary Loans Secured as Result of Delinquent Taxes

The board of county commissioners must, at its regular meeting in January of each year, ascertain and determine the total amount of taxes levied by such county on all real estate payable during the fiscal year just ended and which remained delinquent and unpaid at the close of such fiscal year excluding there from any and all amounts added thereto for penalties, interest, and costs of publication because of such delinquency, such delinquent taxes being so segregated as to show the amount thereof

levied for each particular fund of the county. (7-21-35) The board of county commissioners must also, at the same time, ascertain and determine the total amount of all warrants issued against each fund payable out of the appropriations for such fiscal year and which remain outstanding and unpaid at the close of such fiscal year because of insufficient money in the fund on which drawn to pay the same, together with the amount of interest accrued thereon, and also the amount of all claims and liabilities payable out of the appropriations for such preceding year for which no warrants have been issued, and the total amount of such claims and liabilities payable out of each particular fund. (SDCL 7-21-36) For the purpose of providing funds for the payment of outstanding warrants and claims and liabilities, the board of county commissioners may, whenever the total amount of delinquent taxes for the preceding year on real estate payable into any fund shall be more than five percent of the total amount of taxes levied on real estate during the preceding year, without being required to submit the question of so doing to any election, by a resolution provide for the borrowing of money for the fund in an amount equal to the excess of delinquent taxes over five percent and shall issue certificates of indebtedness therefore, which shall be in denomination of one hundred dollars or multiples thereof, shall bear interest at a rate to be negotiated by the parties from the date thereof until paid and redeemed and shall be registered in the office of the county treasurer. (SDCL 7-21-37)

The certificates of indebtedness issued pursuant to § 7-21-37 shall be in substantially the same form as warrants drawn against the general fund of the county, except that they shall be known as certificates of indebtedness and each shall recite in the body thereof that it is drawn against and the principal and interest thereof is payable out of a special fund to be known as the "Delinquent tax fund for the fiscal year ending December 31st, 20____," and will be called in and paid and redeemed whenever there is sufficient money in such fund applicable for such purposes. (SDCL 7-21-38) Certificates of indebtedness issued pursuant to § 7-21-37 may be sold by the board at either public or private sale, but shall not be sold at less than their par value, or may be exchanged for such outstanding warrants, dollar for dollar with accrued interest thereon, but no brokerage, legal, or other fees, or commissions of any kind shall be paid to any person or corporation for negotiating or assisting in the preparation, sale, or exchange thereof. (SDCL 7-21-39)

Such resolution must create a fund to be known as the "Delinquent tax fund for the fiscal year ending December 31st, 20____," and shall provide that all delinquent taxes levied during such fiscal year for the funds for which such money has been borrowed, together with all penalties, interest, and costs added thereto, shall be, as fast as the same are collected, paid into and deposited to the credit of such fund, and shall be used for the payment of principal of and interest on such certificates of indebtedness and for no other purpose. (SDCL 7-21-41)

10.110 Transfer of Special Funds

The board of county commissioners may transfer the surplus moneys that may be on hand in any of the several funds to such fund or funds as they may deem for the best interest of the county or may appropriate such surplus moneys to the payment of any outstanding indebtedness of the county. No moneys in any fund shall be transferred there from unless there be left in such fund sufficient money to pay all outstanding warrants drawn against such fund, together with any other indebtedness or contemplated expenditures from said fund for the current fiscal year. No money shall be transferred from any sinking or interest fund unless sufficient money be left therein to pay all interest which may accrue on and the principal of all outstanding bonds. (SDCL 7-21-48)

Upon receipt from the register of deeds of the certified list of transfers of real estate, the county director of equalization shall check the assessment rolls of real estate for that year and shall revise the

assessment rolls so that the real estate is assessed to the true owner as shown by the list of transfers. (SDCL 10-3-32)

The secretary of revenue and regulation shall exercise general supervision over the administration of the assessment and tax laws of the state, over all boards of review and equalization, and all other assessing officers in the performance of their duties. The secretary of revenue and regulation shall provide that all assessments of property are made relatively just and equal in compliance with the laws of this state. The secretary of revenue and regulation shall prepare suitable forms for the listing of property and shall arrange and classify the items of all property in such groups and classes, and from time to time may change and separate or consolidate the groups or classes as necessary to secure more accurate and perfect listing and valuation of all property of the state. The secretary shall require all assessing and taxing officers to use blanks, forms, and books corresponding and conforming in size, form, and arrangement to those prescribed by the secretary of revenue and regulation. (SDCL 10-1-15) (AGR 1959-60, pp. 69-72)

All state-owned lands, known as public shooting areas, acquired under the provisions of §§ 41-2-19 to 41-2-21, inclusive, or which may hereafter be so acquired, and all state-owned game production lands or areas and controlled hunting areas, are subject to taxation by the local taxing districts within which the lands are severally located for county, township, and school purposes only. The lands shall be assessed by the directors of equalization in the same manner as other lands are assessed for taxation. The assessments shall be equalized and the lands entered upon the tax lists for taxation in the same manner as other lands are equalized and entered, but in extending the levy of taxes against the lands, the taxing officer may extend only the levies made by the local taxing districts for county, township, and school purposes. (SDCL 41-4-8) (Cn. XI, 5) All state owned lands relating to rural credits are subject to taxation by the local taxing districts within which such lands are severally located for county, township and school purposes only. (Cn. XI, 5)

10.111 Expenditures in Excess of Budget Appropriations

Unless specially and expressly authorized by law, it shall be unlawful for the board of county commissioners or any member thereof, or for any officer of any county or any employee thereof in charge of any institution or agency of a county, to contract any indebtedness or incur any liabilities for or in behalf of the county, in any manner whatsoever, either for a purpose, object, or item for which no appropriation is provided in the budget of such county for the fiscal year in which such indebtedness is attempted to be contracted or liability attempted to be created, or in excess of the amount of any specific appropriation for any purpose, object, or item set forth in the budgets of such county, for the fiscal year in which such indebtedness is attempted to be contracted or liability attempted to be created. (SDCL 7-21-25) All officers, boards, and members of boards, employees, and all other persons authorizing, contracting, or incurring, or attempting to authorize, contract, or incur any indebtedness or liability for or in behalf of any county or any institution or agency thereof in violation of the provisions of this chapter, or auditing, allowing, ordering paid, drawing, or issuing warrants in payment of, or paying any claims or demands upon or against a county or any institution or agency thereof, for any liability or indebtedness attempted to be created or incurred in violation of the provisions of this chapter shall be jointly and severally liable in person and on their official bonds to the county or to the institution or agency thereof of which they are officers or employees, to the extent of any payment or payments made on such void claims. (SDCL 7-21-27) All officers, boards, and members of boards, and employees of a county or any institution or agency thereof, authorizing, contracting, or incurring, or attempting to authorize, contract, or incur any indebtedness or liability for or in behalf of such county or institution thereof of which they are officers or employees, in violation of the provisions of this chapter, shall be

jointly and severally liable in person and on their official bonds to the person, persons, corporation, or corporations damaged by such illegal authorization, indebtedness, or liability, to the extent of the loss sustained by such person, persons, corporation, or corporations. (SDCL 7-21-28)

10.112 County Budgeting for Unanticipated Expenses

Any reimbursements received for unanticipated expenditures charged to any budget activity may be considered a supplemental budget and added to the budget activity from which it was paid. The supplement shall be recorded in the minutes of the proceedings of the board of county commissioners.

Taxation Powers

10.201 Determination of Annual Tax Levy

Before October first in each fiscal year and after the annual budget for the following fiscal year has been approved and adopted, the board shall compute and determine:(1) The total amount of all appropriations contained in the budget for the next fiscal year, and payable out of each particular fund;(2) The total amount of revenue, except taxes on real property, likely to be received by each particular fund during the next fiscal year from all sources which includes the unobligated fund balance of each particular fund and excludes amounts authorized by law to be held in reserve;(3) The difference between the total amount determined in subdivision (2) above, and the total amount determined in subdivision (1) above, and to the amount of such difference for each particular fund shall be added an amount equal to five percent of the total amount of all appropriations payable out of such fund during the next fiscal year and the total of such two amounts shall be the amount necessary to be raised for such fund during the next fiscal year by taxes on real property. (SDCL 7-21-18)

The board shall, after determining the amount of each fund pursuant to § 7-21-18, levy a tax for each such fund sufficient to raise the required amount therefore. Nothing contained herein shall be construed to authorize any tax levy in excess of any limitation upon tax levies which are now or which may hereafter be imposed by any of the laws of this state. (SDCL 7-21-19) The total unreserved, undesignated fund balance of the general fund may not exceed forty percent of the total amount of all general fund appropriations contained in the budget for the next fiscal year. The total unreserved, undesignated fund balance of the general fund of the county as of March thirty-first and September thirtieth shall be published in the minutes of the proceedings of the board of county commissioners and reported to the Department of Legislative Audit. The report shall be on forms prescribed by the Department of Legislative Audit. (SDCL 7-21-18.1)

The president and secretary shall certify the estimate provided by § 34-31A-20 to the proper county auditor or county auditors, on or before October first of each year. The auditor shall levy a tax not to exceed one dollar per thousand dollars of taxable valuation upon the taxable property within the district for the maintenance of the fire protection district for the fiscal year as provided by law. (SDCL 34-31A-21)

On the first Tuesday in September of each year, or within ten days thereafter, the board of county commissioners shall levy the necessary taxes for the current fiscal year on all taxable property in the county. The taxes shall be based upon an itemized estimate of the county expenses for the ensuing year. No greater levy of county tax may be made upon the taxable property of any county than will be equal to the amount of such expenses, with an excess of five percent of the same. (SDCL 10-12-8) See also SDCL 10-12-9)

Any person making an application under the provisions of this chapter is entitled to a real property tax assessment freeze upon the person's single-family dwelling if the following conditions are met. The

person:(1) Has a household income of less than twenty thousand dollars if the household is a single-member household or the person has a household income of less than twenty-five thousand dollars if the household is a multiple-member household; and(2) Has been a property owner and a resident of South Dakota for at least one year; and(3) Has resided for at least two hundred days of the previous calendar year in the single-family dwelling; and(4) Has established a base year. The surviving spouse of a person who has previously qualified is entitled to the real property tax assessment freeze if the surviving spouse meets the other conditions of this chapter. Beginning on January 1, 2005, the household income listed in subdivision (1) of this section shall increase by the index factor. The index factor is the annual percentage change in the consumer price index for urban wage earners and clerical workers as computed by the Bureau of Labor Statistics of the United States Department of Labor for the year before the year immediately preceding the year of adjustment or the annual percentage change in federal social security payments for the preceding year, whichever is greater. (SDCL 10-6A-2)

The application for the real property tax assessment freeze provided under this chapter shall be annually submitted on or before April first on forms prescribed by the secretary of revenue and regulation. The form shall be made available to the county treasurer who shall, upon request of an applicant, assist the applicant in completing the form. The property owner shall sign the certificate under penalty of perjury. A person failing to comply with the April first deadline for the previous year, but otherwise qualifying for the real property tax assessment freeze provided under this chapter, may petition the board of county commissioners to recalculate the taxes based on the valuation the person would have received under this program and abate the difference in taxes. (SDCL 10-6A-4) The county treasurer shall certify the eligibility and household income of each applicant to the county director of equalization of the county in which the dwelling of each applicant is located. Upon such certification, the director of equalization shall freeze the real property tax assessment. (SDCL 10-6A-7)

All county, township, municipal, sanitary district, and school taxes, except special assessments in municipalities, shall be levied or voted in specific amounts of money required and within the limitations fixed by law. The amount of such levies made by any of such taxing districts except counties shall be certified to the county auditor of the county by the clerk or corresponding officer of the taxing district on or before the first day of October of each year and such certificates shall be filed by such auditor as permanent records of his office and be open to public inspection at all times. Any levy so filed may be altered in any respect permitted by law, by proper action of the governing body of the taxing district involved, at any time before extension of the tax for said district has been commenced by the county auditor, upon filing a properly amended certificate showing the alteration required. (SDCL 10-12-7)

If on any assessment roll or tax list there be any error in the name of the person assessed or taxed, the name may be changed and the tax collected from the person intended, if he be taxable and can be identified by the director of equalization or county treasurer. If there shall be any error in the description or quantity of real property assessed or taxed such error may in like manner be corrected and the tax collected in the proper amount as determined by computation. (SDCL 10-11-9) If any error appears in the computation or extension of the amount of any tax the county treasurer shall notify the county auditor who shall forthwith correct the original and duplicate tax lists and the correct amount shall then be collected by the treasurer. (SDCL 10-11-10) (AGR 1959-60, pp. 318-319)

10.202 Limit on County Tax Levies

The total annual organized county tax levy for all purposes may not exceed twelve dollars per thousand dollars of taxable valuation.

Under the South Dakota Constitution the legislature must, by general law, exempt from taxation, property used exclusively for agricultural and horticultural societies, for school, religious, cemetery, and

charitable purposes, property acquired and used exclusively for public highway purposes. (Cn. XI, 6) These exemptions are not self-executing but require legislative action to be in effect. (AGR 1959-60, pp. 135-136)

10.203 Exceptions to Tax Levy Limits

A county may levy taxes in addition to the limit prescribed in § 10-12-21 for the following purposes:

(1) Accumulation for all county buildings and structures pursuant to §§ 7-25-1, 7-27-1, and 34-8-5;

(2) Accumulations for interest and principal payments on all county bonds, long-term indebtedness, and judgments pursuant to §§ 7-18-7, 7-22-11, 7-24-18, and 41-18-6;

(3) For the highway and bridge reserve fund pursuant to § 10-12-13;

(4) For the snow removal and emergency disaster fund pursuant to § 34-5-2;

(5) For a railroad authority pursuant to § 49-17A-22;

(6) For regional airport authorities pursuant to § 50-6A-24;

(7) For secondary roads pursuant to § 31-12-27;

(8) For fire protection pursuant to § 34-31-3. (SDCL 10-12-21.1)

There is levied on each company, as of May first of each year, a tax of two percent upon the gross receipts derived by it from the furnishing of electric energy during the preceding calendar year. Gross receipts for taxation purposes may not include dividends or distributions to patrons whether paid or credited. Each company taxed pursuant to § 10-36-6 shall receive a credit against the gross receipts tax due and payable if it has contracted jointly or severally for the use of property in this state owned, held under lease, or otherwise by a light or power company defined in § 10-35-2, a consumer power district organized pursuant to chapter 49-35, or a municipal power agency organized pursuant to chapter 9-41A if the property is assessed for taxation pursuant to chapter 10-35, subject to an excise tax as provided in § 49-37-13, or taxed as provided in § 9-41A-36. A company taxed pursuant to § 10-36-6 may deduct as a credit from the gross receipts tax to be paid, that portion of the taxes included in the payments by the company to such organizations for the use of the property described in the contract. (SDCL 10-36-6) There is levied on each company, as of May first of each year, a tax of two percent upon the gross receipts derived by it from the furnishing of electric energy during the preceding calendar year. Gross receipts for taxation purposes may not include dividends or distributions to patrons whether paid or credited. Each company taxed pursuant to § 10-36-6 shall receive a credit against the gross receipts tax due and payable if it has contracted jointly or severally for the use of property in this state owned, held under lease, or otherwise by a light or power company defined in § 10-35-2, a consumer power district organized pursuant to chapter 49-35, or a municipal power agency organized pursuant to chapter 9-41A if the property is assessed for taxation pursuant to chapter 10-35, subject to an excise tax as provided in § 49-37-13, or taxed as provided in § 9-41A-36. A company taxed pursuant to § 10-36-6 may deduct as a credit from the gross receipts tax to be paid, that portion of the taxes included in the payments by the company to such organizations for the use of the property described in the contract. (SDCL 10-36-7) The tax levied by § 10-36-6 shall become due and be payable to the county treasurer of each county in which such company operates and as certified by the secretary of revenue and regulation on September first of each year following the filing of the report of such gross receipts. (SDCL 10-36-8) The tax imposed by § 10-36-6 is in lieu of any and all taxes levied by the state, counties, municipalities, townships, school districts, or other political subdivisions of the state on the personal property of the company located in any such rural area and used or intended for use in the distribution or transmission of electric energy, but is not in lieu of the retail occupational sales tax or the use tax, and this chapter

does not exempt such companies from the payment of the retail occupational sales tax or use tax. (SDCL 10-36-11)

10.204 Purpose of Tax Levies

This section covered by SDCL 10-12-9.

10.205 Purposes for Tax Levies in Unorganized Counties

There are no unorganized counties in South Dakota

10.206 Assessment of Property

The office of county director of equalization is hereby established in each organized county of this state. 9SDCL 10-3-1) The county director of equalization shall possess knowledge and training in the field of property taxation. (SDCL 10-3-2) The county director of equalization shall be appointed by the board of county commissioners at either a special or regular meeting of the commissioners. If a single municipality contains fifty percent or more of the population of a county, the mayor of the municipality and the board of county commissioners shall make the appointment, and the mayor is entitled to sit and vote with the board. (SDCL 10-3-3) The director of equalization, before entering upon the duties of the office, shall file with the county auditor the oath of office and a bond, in the manner and form prescribed by § 10-3-12. (SDCL 10-3-4) The term of office of the director of equalization shall commence upon appointment and may be terminated for cause as provided in § 3-17-6 upon recommendation of the appointing governing body after hearing upon not less than ten days' notice. However, the board of county commissioners may dismiss the director of equalization without cause during the first year of such appointment. After the first year of such appointment, no person is qualified to serve unless such person holds an appropriate certificate issued by the Department of Revenue and Regulation. Vacancies in office shall be filled in the same manner as the original appointment is made. (SDCL 10-3-5) The board of county commissioners shall fix the salary of the director and in fixing the salary shall take into consideration the number of deputies, the number of first, second, and third class municipalities within the county, the number of real property assessments made during the previous year, the character of the services, amount of labor to be performed, and such surrounding circumstances as affect the cost of living and supporting oneself at the county seat, compatible with the dignity of the office. The salary of a county director of equalization shall be paid on a monthly basis. (SDCL 10-3-6) The county director of equalization shall receive necessary traveling expenses as fixed for county officials by § 7-7-24. The director shall receive necessary traveling expenses as provided by § 7-7-24 if attending meetings called by the secretary of revenue and regulation. (SDCL 10-3-7)

No state or county official or any other person charged with the duty of assessing or appraising real property for purposes of taxation may continue in office unless he holds an appropriate certificate issued by the Department of Revenue and Regulation, upon successful completion of a written examination or has been accepted for enrollment in a certification program to be conducted by the department and approved by the South Dakota Association of Assessing Officers, to be completed within one year. Certification is not required of clerical staff not engaged in field assessing or appraising. (SDCL 10-3-1.1) The Department of Revenue and Regulation shall provide for the examination of applicants for certification or renewal. No certificate or renewal thereof may be issued to any person who has not demonstrated to the satisfaction of the department that he is competent to perform the designated duties of his office. Prior to accepting persons for enrollment or issuing certificates, the

secretary of the department shall promulgate rules pursuant to chapter 1-26 for determining enrollment in its certification program and setting standards for certification. (SDCL 10-3-1.2)

The county director of equalization and each of the director's deputies shall, within ten days of appointment, file with the county auditor the oath of office and a bond, payable to the county, with one or more sufficient sureties, in a penal sum fixed by the board of county commissioners, to be approved by the board of county commissioners, and conditioned that the director or deputy will diligently, faithfully, and impartially perform the duties of the office. The director and each deputy shall take and subscribe on such bond the following oath:

State of South Dakota,

County of _____, ss.I, _____, do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of South Dakota, that I will faithfully, impartially, and honestly discharge the duties of my office as (director of equalization)(assessor)(deputy), particularly that I will assess all property assessed by me at its true cash value according to my best knowledge and judgment, so help me God._____ Subscribed and sworn to before me this _____ day of _____, 20_____._____ If any person so appointed fails to give the bond, or fails to take the required oath within the time prescribed, such failure constitutes a refusal to serve. (SDCL 10-3-12) The director of equalization is liable on the director's official bond for all taxes on property within the county that, through the director's willful failure or willful neglect, is unassessed. Any deputy of the director of equalization is liable on the deputy's official bond for all taxes on property within the county that, through the deputy's willful failure or willful neglect, is unassessed. (SDCL 10-3-39)

The director of equalization and the director's deputies shall list or assess the property described in § 10-3-16 separately as to each incorporated municipality, each organized civil township, and unorganized territory within or without the county and shall deliver separate complete assessment rolls for each such entity to the local board of equalization of such entities no later than the third Monday in March and to the board of county commissioners for all unorganized territory, not later than the second Monday in April of each year, with the proper affidavits or certificates or return as provided by law. A duplicate copy of the assessment roll shall be furnished each municipality and each organized civil township that has requested such a copy by resolution of the governing body presented to the director of equalization before December first. The municipality or township shall pay the cost of the duplicate copy. (SDCL 10-3-28)

The board of county commissioners of each county in this state shall furnish to the director of equalization of said county, an office, all necessary furniture, equipment, fixtures, and supplies, including heat, light, stationery, books, maps, assessment rolls, and such material as may be necessary for the proper discharge of the duties of his office. A municipally appointed deputy shall be furnished with necessary like items by the governing body of the respective first or second class municipality. (SDCL 10-3-15) (AGR 1957-58, p. 130)

10-3-16 Assessment of property by director--Exception--County as assessment district.
10-3-17, 10-3-18. Repealed.
10-3-19 Requiring statement for agricultural census.
10-3-20 Requiring affidavit of name and residence.
10-3-21 Affidavit of name and residence transmitted to other county.
10-3-22 Subpoena and examination with respect to assessment statement--Place of examination.
10-3-23 Entry on and inspection of property--Listing of taxpayers.
10-3-24 Addition of omitted property to assessment rolls.
10-3-25 Assessment of property of absent or unknown owner.
10-3-26 Valuation of property of absent or unknown owner.

10-3-27 Valuation of property on neglect or refusal by owner to comply with requirements--Notation of neglect or refusal.
10-3-28 Listing of assessed property by districts--Delivery of assessment rolls to boards of equalization and county commissioners--Duplicate copy for municipality.
10-3-29 Preparation and maintenance of county topographical map and tables--Contents.
10-3-30 Preparation and maintenance of county land valuation map--Contents.
10-3-31 Examination of recorded real estate conveyances--Record of considerations shown--Destruction.
10-3-32 Posting of real estate transfers to assessment rolls.
10-3-33 Assistance to county commissioners and boards of equalization.
10-3-34 Investigation of applications for reduction of value, abatement, and settlement--Recommendations.
10-3-35 Appeal by director to county board of equalization--Taxpayer's right to appeal to circuit court preserved--Stay of appeal to Office of Hearing Examiners.
10-3-36 Extension of changes made by boards of equalization--Abstract submitted to Department of Revenue and Regulation.
10-3-37 Other assessors' powers exercised by director.
Assessment of mobile home laws in SDCL Chapter 10-9.

Real property, for the purposes of ad valorem taxation, includes the land itself, whether laid out in town lots or otherwise, and improvements to the land, such as ditching, surfacing and leveling, and all rights an privileges thereto belonging, and all mines, minerals and quarries in and under the same. Real property also includes all buildings, structures and mobile homes as defined in SDCL 32-3(8) which are permanently affixed by foundation to the land upon which they are located, including systems for the heating, air conditioning, ventilation, sanitation, lighting and plumbing of such structures, buildings and all rights and privileges thereto belonging.

Real property does not include items which pertain to the use of such structures, buildings and mobile homes, such as tools, implements, machinery or equipment used in the business, productions, trade or manufacturing activity conducted thereon with are not constructed as an integral part of and are not essential for the support of such structures, buildings or mobile homes, and which are removable without materially limiting or restricting the use of such structures, buildings or mobile homes regardless of size, weight or method of attachment. Personal property for the purpose of ad valorem taxation includes all property that is not included within the definition of real property.

Whenever a railroad's right-of-way, street, or railroad properties owned or operated for railway purposes shall be included within any assessment for local improvement, such railroad right-of-way, street, or railroad properties owned or operated for railway purposes shall be assessed only if, and to the extent that, it is determined by the Department of Revenue that it will benefit from the proposed improvements. In determining whether or not such railroad right-of-way, street, or railroad properties operated for railway purposes benefits, its existing use as a railroad right-of-way, street, or railroad properties operated for railway purposes shall be presumed to be permanent. (SDCL 6-5A-1)

For tax purposes, land is agricultural land if it meets two of the following three criteria:(1) At least thirty-three and one-third percent of the total family gross income of the owner is derived from the pursuit of agriculture as defined in subdivision (2) of this section or it is a state-owned public shooting area or a state-owned game production area as identified in § 41-4-8 and it is owned and managed by the Department of Game, Fish and Parks;(2) Its principal use is devoted to the raising and harvesting of crops or timber or fruit trees, the rearing, feeding, and management of farm livestock, poultry, fish, or nursery stock, the production of bees and apiary products, or horticulture, all for intended profit pursuant to subdivision (1) of this section. Agricultural real estate also includes

woodland, wasteland, and pasture land, but only if the land is held and operated in conjunction with agricultural real estate as defined and it is under the same ownership;(3) It consists of not less than twenty acres of unplatted land or is a part of a contiguous ownership of not less than eighty acres of unplatted land. The same acreage specifications apply to platted land, excluding land platted as a subdivision, which is in an unincorporated area. However, the board of county commissioners may increase the minimum acre requirement up to one hundred sixty acres. (SDCL 10-6-31.1)

10.207 General Property Equalization

In districts having local boards of equalization each director of equalization shall, on or before the third Monday in March, annually make out and deliver to the clerk of the local board, or if there is no local board of equalization, then to the county auditor, the assessment books, lists, rolls, looseleaf books and records, lists, card system, auxiliary and miscellaneous records, and returns herein provided for. Such books, lists, rolls, and returns are open to public inspection by all interested persons, until the following Saturday. (SDCL 10-6-44) The county commissioners, or a majority of them, constitute a board for the equalization of the assessment of property. Before entering upon the discharge of their duties, each member of the board shall take an oath to fairly and impartially perform the duties of a member of the board. The board shall meet for the purpose of hearing appeals and equalizing the assessments of property. The board shall meet annually on the second Tuesday in April at the Office of the Auditor. The board shall continue in session and may adjourn from time to time until all properly filed appeals have been determined and equalization is completed. The board may remain in session no longer than three weeks after the second Tuesday in April. (SDCL 10-11-25)

The county board of equalization shall place upon the books of any taxing district within the county any property that may have been omitted by error or neglect of the director of equalization or board of equalization of the local assessment district. The procedure provided for in §§ 10-11-2 to 10-11-8, inclusive, relating to the assessment of omitted property is applicable as far as practicable. (SDCL 10-11-29) Nothing contained in § 10-11-29 shall be construed to authorize any county board of equalization to raise or lower the assessment on any piece or parcel of real property, with or without the improvements thereon, above or below that of an adjoining piece or parcel of real property of equal value, by which an inequality may be produced which would allow or cause a reassessment by such county board of equalization to be made of the real property of the whole taxing district. (SDCL 10-11-31) No individual assessment of any property owner of the county may be raised without notice in advance to the property owner, except as authorized in subdivision 10-11-26(4). (SDCL 10-11-34) Since the authority to evaluate and assess real personal property fro the purpose of taxation is delegated exclusively to the director of equalization and such other governmental agencies as provided by law, including the Secretary of Revenue and several state and county boards of equalization, the county board of commissioners is without authority to employ commercial appraiser for assessment purposes. The county board is not authorized to function in the capacity as an assessor. (AGR 1955-56, pp. 424-425)

Terms used in this chapter mean:(1) "Credit," every claim and demand for money or other valuable thing and every annuity or sum of money receivable at stated periods, due or to become due, and all claims and demands secured by deeds or mortgages due or to become due, except for contracts for deed and mortgages, in which case the term means only the payment received each year under the contract or mortgage;(2) "District," township, municipality or ward, as the case may be;(3) "Full agricultural land value," the value of agricultural land as determined by the application of this chapter;(4) "Money," gold and silver coin, treasury notes, bank notes, and every deposit which any person owning the same or holding in trust and residing in this state is entitled to withdraw in money on

demand; (5) "Tract," "lot," "piece," or "parcel" of real property, or "piece or parcel of land," any contiguous quantity of land in the possession of, owned by, or recorded as, the property of the same claimant, person, or company;(6) "True and full value," for all real property, the usual cash selling price at the place where the property to which the term is applied shall be at the time of the assessment. (SDCL 10-6-1) All property shall be assessed at its true and full value in money. The true and full value is the taxable value of such property upon which the levy shall be made and applied and the taxes computed. In determining the true and full value of property the director of equalization may not adopt a lower or different standard of value because it is to serve as a basis of taxation. The director may not adopt as a criterion of value the price for which the property would sell at a forced sale, or in the aggregate with all the property in the third class municipality or district. The director shall value each article or description by itself and at an amount or price as he believes the property to be fairly worth in money. The true and full value shall be determined by appropriate consideration of the cost approach, the market approach and the income approach to appraisal. The director of equalization shall consider and document all elements of such approaches that are applicable prior to a determination of true and full value. (SDCL 10-6-33) (RE Jepson's Appeal, 76 SD 421, 80 NW 3d 76 (1956))

Any person who shall intentionally evade, deceive, or by any manner or means, not list all the property of every description which he is required to list, shall, in addition to any and all other penalties, be subject to the penalty of having added to his assessment as previously listed, the amount not listed and an additional penalty of fifty percent of the amount not listed. (SDCL 10-6-20) (AGR 1953-54, pp. 359-360)

The county director of equalization shall calculate the changes of the assessment lists determined by the county board of equalization and make corrections accordingly. Having made corrections of the lists, the director shall make duplicate abstracts of the list, one copy of which shall be filed in his office and one copy shall be forwarded to the Department of Revenue and Regulation on or before the third Monday of May following each county equalization. The abstract shall be in the form prescribed by the Department of Revenue and Regulation. (SDCL 10-11-41) Any owner or taxpayer feeling aggrieved by the decision of the county board of equalization relative to the assessment of its property or any taxing district or governmental subdivision or agency in which such property is located, feeling aggrieved by the decision of the county board of equalization may appeal to the Office of Hearing Examiners. An appeal to the Office of Hearing Examiners from a county board of equalization shall be perfected by mailing or by filing a notice of appeal with the chief administrative law judge, Pierre, South Dakota, no later than the third Friday in May. If perfected by mailing, the postmark shall be conclusive evidence regarding the timeliness of the appeal. The chief administrative law judge shall file a copy of the notice with the county director of equalization within ten days after receipt of notice of appeal. The county director of equalization shall file notice of appeal to the appropriate clerk of the local board of equalization prior to the hearing of the appeal by the Office of Hearing Examiners. The notice shall state informally the substance of the decision appealed from and the grounds upon which appeal is taken. The county board of equalization or any person with pecuniary interested in sustaining its decision, as well as the appellant, may be heard in person or by attorney upon appeals to the Office of Hearing Examiners. Nothing in this section prevents an appeal to the circuit court as provided in § 10-11-44, but an appeal to either tribunal excludes an appeal to the other. (SDCL 10-11-42) An appeal from the Office of Hearing Examiners to circuit court may be taken by the parties to the appeal and interveners before the Office of Hearing Examiners. The appeal shall be taken and conducted pursuant to the provisions of chapter 1-26. The venue of the appeal shall be in the circuit court for the county in which the property subject to the appeal is situated. (SDCL 10-11-43) The secretary of revenue and regulation may equalize the assessment:(1) Of all property between those counties where a school district or municipality lies partly in each, but only if the board of county commissioners of one of the counties

makes request in writing for such equalization;(2) Of all property between counties whenever a state levy is made pursuant to § 10-12-1. (SDCL 10-11-47) On or before the fourth Monday in August, the Department of Revenue and Regulation shall transmit to each county auditor a certificate, specifying the percent added to or deducted from the valuation of each class of real property in the several counties of the state and the adjustment made pursuant to § 10-13-37. The certificates shall show the equalized valuation of all property within such county assessed by the secretary of revenue and regulation as required by law. If equalization is made pursuant to subdivision 10-11-47(2), the certificate shall show the levy or levies for state purposes made by the secretary of revenue and regulation. (SDCL 10-11-51)

10.208 Equalization of Taxes in Counties with School and Endowment Lands

The commissioner of school and public lands shall on or before June first of each year certify to the auditor of each county where school and endowment land exists a list of all school and endowment lands in the county, and name and address of each lessee and the number of acres of school and endowment land under lease. (SDCL 5-11-1) The county auditor of each county having within its boundaries school and endowment lands shall ascertain the average assessed valuation per acre of all taxable agricultural lands within the county, after the assessment of such lands have been finally equalized by the boards of equalization and shall multiply such average assessed valuation by the number of acres of school and endowment lands and the resultant figure shall be added to the assessed valuation of such county to arrive at the rate of tax levy in mills for the county. Provided, however, that the amount ascertained by the county auditor as representing the value of school and endowment lands shall not be included or considered in determining the assessed value of any county or school district for any purpose whatsoever, except as herein expressly provided in establishing rates of levy. (SDCL 5-11-2)

The county auditor of each county shall ascertain the average assessed valuation per acre of all taxable agricultural lands within the several school districts of his county, within the boundaries of which are school and endowment lands after the assessments of such lands have been finally equalized, and shall multiply such average assessed valuation by the number of acres of school and endowment lands and the resultant figure shall be added to the assessed valuation of such district to arrive at the rate of levy in mills for each school district. (SDCL 5-11-3)

10.209 Classification and Valuation of Property Within County

The board of county commissioners in any county in this state may, upon petition signed by at least twenty percent of the resident freeholder voters of the county and filed with the county auditor before April first of the year in which classification is sought, authorize the classification of all real property subject to taxation within such counties, for taxation purposes on the basis and in the manner hereinafter specified. (SDCL 10-10-1)

When the classification records specified in §§ 10-10-4 and 10-10-5 shall have been completed and accepted by the board of county commissioners, the same shall be deposited in the office of the county auditor, and the county commissioners shall forthwith proceed to place a value upon each separate tract of land so reported and insert such value in said classification record. Such valuation shall be made separately for each and every civil township, or municipality within the county. (SDCL 10-10-7) The county commissioners at the regular annual equalization meeting, shall consider the classification made pursuant to § 10-10-5, together with the value placed upon each tract of land and the value of the improvements thereon, and may, for good cause shown, change such classification and value thereon as may be just, and shall make such equalization thereof between the various townships as is now provided by law therefore. The valuations placed upon such lands shall become the basis for taxation purposes subject only to any change that may be made under the law by the Office of Hearing Examiners in equalizing property valuations between the different classes of property in the various counties of the state. However, the Office of Hearing Examiners may not in any way raise the total valuation of such property within the state. (SDCL 10-10-8) Whenever the board of county commissioners, acting as board of equalization, shall determine to change the classification and value of any real estate valued by it pursuant to classification as herein provided, fifteen days' notice shall be given of such contemplated action to the taxpayers affected by the county auditor within which to show cause why such change in classification and value should not be made. (SDCL 10-10-9)

For the purposes of taxation, all property is hereby classified into the following classes:(1) Agricultural property;(2) Nonagricultural property;(3) Owner-occupied single-family dwellings; and (4) Nonagricultural acreage property. Agricultural property includes all property and land used exclusively for agricultural purposes, both tilled and untilled, and the improvements on the land. However, agricultural property does not include any normally occupied dwelling or automobile garage or portion of a building used for that purpose by the occupant of such dwelling. Owner-occupied single-family dwellings include all property classified pursuant to § 10-13-39 and nonagricultural acreage property includes all property classified pursuant to § 10-6-33.14.Nonagricultural property includes all other property not otherwise classified. The director of equalization in listing and assessing all property to which this section applies shall designate opposite each description the class to which the property belongs. (SDCL 10-6-31) Land devoted to agricultural use shall be classified and taxed as agricultural land without regard to the zoning classification which it may be given; provided, however, that all or any portion of such land which is sold or otherwise converted to a use other than agricultural shall be classified and taxed accordingly. (SDCL 10-6-31.1) The capacity of agricultural land to produce agricultural products shall be based on average yields under natural conditions for land producing crops or plants and on the average acres per animal unit for grazing land. The average shall affect each operating unit and shall be based on the ten-year period immediately preceding the tax year in issue. In determining the capacity to produce, the county director of equalization and the county board of equalization shall consider yields, the extent to which the land is able to be tilled or is non-tillable based upon soil type, terrain, topographical, and surface conditions, and animal unit carrying capacity, as

determined by the natural resources conservation service, farm credit services of America, farm service agency, the extension service, and private lending agencies dealing with land production capacities. (SDCL 10-6-33.2) Land or improvement on land within an operating unit which is not used incident to an agricultural pursuit shall be separately listed and assessed. (SDCL 10-6-33.3)

10.210 Personal Property Tax

Personal property, as defined in this chapter, which is not centrally assessed is hereby classified for ad valorem tax purposes and is exempt from ad valorem taxation. This exemption does not impair or repeal any tax or fee authorized to be levied or imposed in lieu of personal property tax. (SDCL 10-4-6.1)

10.211 Scavenger Tax law

The treasurer of each county within this state may make a list of all taxes upon all real property in the county that appear from the tax records to be delinquent for a period of at least six years and that have not been satisfied by payment, or redemption, or sale of real estate, against which such taxes are assessed, to actual purchasers. The list shall include all such taxes upon any real estate that may at any tax sale have been bid in for the county, except real estate upon which the county holds school loans, and shall include all tax judgments against lands that have not been sold or bid off for the payment of the judgment. If a tax judgment stands against any such real estate, unsatisfied, the taxes and interest shall be computed as if the judgment had not been taken, and a sale of the real estate under the provisions of this chapter satisfies the judgment. The list shall contain a description of each piece or parcel of land and each lot, block, and addition, upon which taxes have not been paid as specified in this section. Opposite each description the name of the owner to whom the taxes are assessed, if known, shall be specified. If the name of the owner is unknown, a statement to that effect shall be provided. The year for which the taxes are delinquent shall be shown giving the year and the amount of tax for each year including the penalty and interest for each year and the total aggregate amount of all taxes delinquent and the penalty and interest. The year given is deemed inclusive. (SDCL 10-26-1) The treasurer shall attach to the list an affidavit to the effect that the list is a correct list and that the taxes as shown on the list are due, unpaid, and delinquent according to the records of the treasurer's office. The treasurer shall, on or before September tenth in the year in which the treasurer prepares the list, also file the list in the office of the county treasurer and county auditor of the treasurer's county. (SDCL 10-26-2) (AGR 1953-54, pp. 361-362) County official should consult their legal advisors for future developments on the collection of delinquent taxes.

10.212 Payment of Real Property Taxes

Except as provided in § 10-9-10, all taxes shall become due on the first day of January of each year next following assessment, levy, or extension of the taxes and as between vendor and vendee shall become a lien upon real property on and after such date. (SDCL 10-21-4) On the first day of May of the year after which taxes have been assessed, one-half of all unpaid real estate taxes are delinquent. However, all real estate taxes totaling fifty dollars or less shall be paid in full on or before April thirtieth. On the first day of each month thereafter there shall be added as interest on the delinquent taxes at the Category G rate of interest as established in § 54-3-16. If the other half is not paid on or before the thirty-first day of October of the same year, that also becomes delinquent on November first and the same interest shall attach in the same manner. If the last day of April or October falls on a Saturday or Sunday, the tax is due and payable on the last working day of that month. The tax payment shall either be received in the office on the last working day or the tax payment shall be postmarked by the last day prior to the taxes becoming delinquent. (SDCL 10-21-23)

The county treasurer cannot refuse to accept the payment of real property taxes until the delinquent installments of special assessments have been paid. (AGR 1953-54, pp. 331-332) Where property has been sold for the combined taxes and special assessment installments, redemption of the tax certificate can only be made by payment of all such special assessments and taxes. (AGR 1955-56, pp. 3-4)

Any person may redeem property bid off by the treasurer in the name of the county at a tax sale, at any time before the tax deed has been issued by paying the amount of all delinquent taxes with penalty and interest up to the date of redemption and the costs of advertising and selling the property. Upon the payment of the taxes, penalties, interests, and costs, the treasurer shall issue a tax receipt and duplicate for the taxes, penalty, interest, and costs, which shall be entered in the treasurer's cashbook as other tax receipts. The treasurer shall also mark upon the tax duplicate in the treasurer's office opposite the description of the real estate the word, redeemed, with the date and name of the person who redeemed the property. (SDCL 10-24-5) In all such cases, the treasurer shall endorse the following upon the redemption certificate or tax receipt issued to the redemptioner, upon the tax list opposite the real estate description involved, and upon the notice sent to the certificate holder:(1) The amount of the total value as determined by the treasurer;(2) The amount of the value of the part or interest sought to be redeemed; and (3) The amount paid as tender for the partial redemption by the proposed redemptioner. (SDCL 10-24-10) Such tender may not be withdrawn by the proposed redemptioner but shall be held by the treasurer subject to acceptance by the certificate holder, or final determination as provided in §§ 10-24-12 to 10-24-15, inclusive, and then disposed of according to the acceptance of the certificate holder or decision on appeal, and paid over to the certificate holder or returned to the proposed redemptioner, according to the acceptance or decision. (SDCL 10-24-11) (AGR 1959-60, pp. 250-251) Moreover, there is no provision whereby the treasurer may accept less than a full year's tax payment to hold in the "Treasurer's Trust", eliminating the penalty and interest provided by law. (AGR 1959-60, pp. 250-251)

If the owner of any bill or claim against the county, other than salary, which has been allowed either in whole or in part by the board of county commissioners, owes any delinquent real property taxes or delinquent mobile home taxes in that county, the county auditor of that county shall deduct the amount of such delinquent taxes from the amount so allowed, and issue to the owner of the bill or claim a warrant for the balance, if any. In case the amount due for delinquent real property taxes or delinquent mobile home taxes exceeds the amount allowed on that bill or claim, the county auditor shall apply the whole amount allowed toward the payment of such delinquent taxes. (SDCL 10-22-5)

County officials should refer to the South Dakota Compiled Laws for the full details regarding the collection of taxes. See Chapters 10-21 and 10-22.

10.213 Abatement, Refund, Compromise, or Cancellation of Taxes

No injunction to restrain or delay the collection of any tax claimed to be due may be issued by any court. However, in any case in which, for any reason, it is claimed that any tax about to be collected is wrongful or illegal, in whole or in part, the remedy, except as otherwise expressly provided by this code, is by payment under protest and action to recover, as provided in § 10-27-2. (SDCL 10-27-1) Any person against whom any tax is levied or who may be required to pay the tax, who pays the tax prior to the tax becoming delinquent and under protest to the treasurer authorized to collect the tax, giving notice at the time of payment of the reasons for such protest may, at any time within thirty days thereafter, commence an action against such treasurer for the recovery of the tax in any court of competent jurisdiction. If the court determines that the tax was wrongfully collected, in whole or in part, for any reason going to the merits of the tax, the court shall enter judgment accordingly, and such judgment

shall be paid in preference to any other claim against the county, upon the final determination of the action. A pro rata share of the money so refunded shall be charged to the state and each taxing district which may have received any part of the tax. The right of appeal shall exist for both parties as in other civil actions. (SDCL 10-27-2) 9AGR 1955-56, pp. 169-171)

Unless otherwise expressly provided, if a person, against whom an assessment has been made or a tax levied, claims that the assessment or tax or any part of the assessment or tax is invalid for any reason provided in subdivisions (1) to (6), inclusive, the assessment or tax may be abated, or the tax refunded if paid. The board of county commissioners may abate or refund, in whole or in part, the invalid assessment or tax in the following cases only:(1) If an error has been made in any identifying entry or description of the real property, in entering the valuation of the real property or in the extension of the tax, to the injury of the complainant;(2) If improvements on any real property were considered or included in the valuation of the real property, which did not exist on the real property at the time fixed by law for making the assessment;(3) If the complainant or the property is exempt from the tax;(4) If the complainant had no taxable interest in the property assessed against the complainant at the time fixed by law for making the assessments;(5) If taxes have been erroneously paid or error made in noting payment or issuing receipt for the taxes paid;(6) If the same property has been assessed against the complainant more than once in the same year, and the complainant produces satisfactory evidence that the tax for the year has been paid. However, no tax may be abated on any real property which has been sold for taxes, while a tax certificate is outstanding. (SDCL 10-18-1)

The board of county commissioners may compromise, abate or rebate taxes in the following cases:(1) The board may abate any or all of the delinquent taxes and penalty on real property if taxes remain unpaid and the property has been offered for sale as required by the code for two successive years and not sold because of depreciation in the value of the property or otherwise, or if any property has been bid in by the county and one year has elapsed since the bid;(2) If the board determines that the full amount of any taxes extended and charged against any real property platted into lots and blocks cannot be realized by a sale of the property or otherwise, it may settle or compromise any of the taxes for any year or years as in its judgment is in the best interest of the county;(3) The board may compromise, abate, or cancel any taxes extended against any real property conveyed to the State of South Dakota for the benefit of any of its educational institutions, or when the county has acquired lands through foreclosure of permanent school fund mortgage loans, courthouse building fund loans, jail building fund loans, courthouse and jail building fund loans, or through foreclosure of mortgages pledged to the county to secure county deposits or lands taken in satisfaction thereof;(4) The board may, as a means of relief, abate in an equitable manner the taxes assessed or extended against real property for the year in which a loss occurred because of flood, fire, storm, or other unavoidable casualty;(5) Repealed by SL 1992, ch 80, § 148;(6) If the board determines that the full amount of any taxes extended and charged against a centrally assessed railroad company cannot be realized by a sale of the property or otherwise, and the railroad is in bankruptcy or receivership, the board may settle or compromise any of the taxes for any year or years as in its judgment is in the best interest of the county;(7) The board may abate or refund the taxes assessed or extended on any real property from which structures have been removed after the assessment date upon verification by the director of equalization;(8) The board may abate or refund the taxes pursuant to § 10-6A-4;(9) The board may abate or refund the taxes pursuant to § 10-13-40.4;(10) The board may abate or refund the taxes pursuant to § 10-4-40. The amount of any such taxes so compromised, abated, or refunded shall be apportioned pro rata among the several funds and taxing districts affected thereby. (SDCL 10-18-2) (AGR 1955-56, pp. 402-403) (Brink v. Dann, 33 SD 81, 144 NW 734 (1913))

If the board of county commissioners is satisfied beyond a doubt that the assessment of real property described in an application for abatement or refund under the provisions of § 10-18-1 is

invalid, inequitable, or unjust, the board, if application is filed no later than the first day of November of the fourth year after which such taxes would have become delinquent, may abate or refund any part thereof in excess of a just, fair, and equitable assessment if such application for correction complies with requirements of this chapter. (SDCL 10-18-1.1)

Where taxpayers list their property at full and true value with the understanding that their property would be assessed at a percentage of full and true value, and discriminatory errors are made by taxing officers in entering the valuations at a higher percentage on the county tax lists, the county board is vested with authority, with approval of any other interested governing body, to abate or refund taxes where the facts can be ascertained from county roads. (Chicago, Rock Island & Pacific Ry. Co. v. Young, 60 SD 291, 244 NW 370 (1932)) (AGR 1953-54, pp. 125-127)

The county treasurer in collecting taxes shall collect the oldest tax first, and may not issue a receipt for the current year until all prior taxes are paid. The existence of a tax receipt issued by the county treasurer is conclusive evidence that all prior taxes which are chargeable against the property described in the receipt have been fully paid and constitutes a bar to the collection of any prior taxes on the property, unless otherwise stated in the receipt. Such statement in the receipt shall specifically identify the tax, which is not to be barred by the receipt. (SDCL 10-21-15) (Harris v. Sterns, 20 SD 622, 108 NW 247 (1906)) (Guaranty State Bank v. Roberts Co., 57 SD 515, 234 NW 35 (1930))

In addition to others specified by law, the board of county commissioners shall have power:

(1) To institute and prosecute civil actions in the name of the county, for and on behalf of the county;

(2) To make orders respecting the care and preservation of all property belonging to the county and to sell any real property of the county when authorized by law so to do;

(3) To levy a tax not exceeding the amount authorized by law, and to liquidate indebtedness;

(4) To audit the accounts of all officers having the care, management, collection or disbursement of any money belonging to the county or appropriated for its benefit;

(5) To construct and repair bridges; to open, lay out, vacate, and change highways; to purchase or acquire grounds for courthouse, jail, or other building sites, locate or relocate the courthouse on such sites; to establish election precincts in its county and appoint the judges of election; and, as a board of equalization, to equalize the assessment roll of its county in the manner provided by law;

(6) To furnish necessary blank books, blanks, and stationery for the county auditor, register of deeds, county treasurer, state's attorney, sheriff, and other elected or appointed county officers, to be paid out of the county treasury; also a fireproof safe or vaults, when in its judgment the same shall be advisable, in which to keep all the books, records, vouchers, and papers pertaining to the business of the board;

(7) To superintend the fiscal concerns of the county and secure their management in the best possible manner;

(8) To regulate the transaction of business in alcoholic beverages, the use and consumption thereof, to establish the number of on-sale licenses which may be issued, provide for reasonable classification of on-sale licenses and to fix the fees to be charged for the various classifications which shall be uniform within each class, all consistent with the provisions of Title 35. The secretary of revenue shall be promptly furnished certified copies of all ordinances and resolutions or amendments thereto adopted relating to the exercise of these powers;

(9) To make ordinances prohibiting the sale or exhibition of any obscene matter; however, no county resolution shall be effective in any incorporated area within said county;

(10) To do and perform such other duties and acts as it is or may hereafter be required to do and perform;

(11) To provide additional compensation to the county treasurer, county auditor, county register of deeds, state's attorney, and sheriff. This compensation shall be in addition to the salaries prescribed in §§ 7-7-9.1, 7-7-12, and 7-12-15;

(12) To provide office space, in addition to that provided in the county courthouse, for state's attorneys, appointed officials of the county and other employees;
(13) To receive and administer grants, loans and assistance and to enter into agreements for cooperative action, with or on behalf of any public agency or nonprofit organization, to establish, promote and support community development;
(14) To enact ordinances to regulate and prevent the placing of ashes, dirt, garbage or any offensive matter in any highway or public ground or in any body or stream of water within the county, but outside of an incorporated municipality or outside of the one mile limits of any incorporated municipality;
(15) To enact ordinances to regulate and compel the cleansing, abatement or removal of any sewer, cesspool or any unwholesome or nauseous thing or place;
(16) To license and regulate transient merchants, hawkers, solicitors, peddlers, itinerant vendors, and every person retailing tangible personal property or services, unless such business is carried on exclusively within the boundaries of a municipality or is carried on through home solicitation or from a fixed permanent location and place of business in this state where such goods and services are offered on a continuing basis;
(17) To enact by ordinance, for any portion of the county which is zoned, certain building codes pursuant to § 11-10-5.
(18) To prohibit or restrict open burning, after consultation with local fire officials and law enforcement officials, in order to protect the public health and safety. 9SDCL 7-8-20)

If any county treasurer shall fail to make return or settlement or to pay over all money with which he may stand charged at the time and in the manner prescribed by law, it shall be the duty of the county auditor, on receiving instructions from the state auditor or from the county commissioners, to cause suit to be instituted against such treasurer and his sureties or any of them in the circuit court of his county. (SDCL 7-11-18) The county shall establish a system of procedures to ensure that the proper amount of taxes have been collected, receipted into accountability, and deposited in the proper amount. If it appears that the treasurer has not collected the full amount of taxes and interest which according to the tax list and the terms of the receipt the treasurer should have collected, the auditor shall forthwith charge the treasurer with the amount such receipt falls short of the true amount, and the treasurer shall be liable on the official bond to account for and pay over the same. (SDCL 10-21-21) (AGR 1955-56, pp. 402-403)

The issuance of a clear receipt for taxes does not bar the collection of additional unpaid taxes on the property for the current year. A clear tax receipt bars the collection of unpaid taxes for prior years. In the case of an unpaid balance for the current year and any subsequent taxes, the taxes, together with interest and penalties, are owed to the county. (AGR 1959-60, pp. 263-264)

No injunction to restrain or delay the collection of any tax claimed to be due may be issued by any court. However, in any case in which, for any reason, it is claimed that any tax about to be collected is wrongful or illegal, in whole or in part, the remedy, except as otherwise expressly provided by this code, is by payment under protest and action to recover, as provided in § 10-27-2. (SDCL 10-27-1) (AGR 1955-56, pp. 285-286)

All real property subject to taxation shall be listed and assessed annually, but the value of such property is to be determined according to its value on the first day of November preceding the assessment. (SDCL 10-6-2) (AGR 1955-56, pp. 324-326) Applications for adjustments, compromises, abatements, or refunds shall be subscribed and sworn to by the applicant; shall describe the tax and property involved; shall set out one or more of the grounds for abatement or refund specified in §§ 10-18-1 and 10-18-2 and relied on by the applicant, and shall ask the board of county commissioners to grant the relief required or permitted by law in such cases. (SDCL 10-18-4) (AGR 1959-60, p. 166)

10-21-23 Delinquency dates for real estate taxes--Interest.
10-21-24 Repealed.
10-21-25 Penalties and interest collected in addition to principal amount.
10-21-26 Delinquency date postponed when tax records destroyed. (AGR 1955-56, pp. 326-327)

If two or more lots or tracts in the same block are assessed to the same person, the lots or tracts may be designated in one description and charged for at the rate of one lot or tract. (SDCL 10-23-4) Any person claiming a part of or an undivided interest in any real property sold for taxes, if the part or undivided interest was acquired before the tax sale from which redemption is sought, may redeem the part or undivided interest at any time before a tax deed has been issued on the property by paying the just proportion of the total amount required for redemption. The just proportion is the proportion that the then existing value of the part or interest for which redemption is sought bears to the then existing value of the whole, as computed by the county treasurer at the time. If the tax sale certificate is held by a person other than the county, the redemption is not complete until the certificate holder accepts the portion so determined by the county treasurer or until the matter is decided as provided in §§ 10-24-12 to 10-24-15, inclusive. (SDCL 10-24-9) (AGR 1957-58, pp. 155-156)

If on any assessment roll or tax list there be any error in the name of the person assessed or taxed, the name may be changed and the tax collected from the person intended, if he be taxable and can be identified by the director of equalization or county treasurer. If there shall be any error in the description or quantity of real property assessed or taxed such error may in like manner be corrected and the tax collected in the proper amount as determined by computation. (SDCL 10-11-9) (SDCL 10-18-1) (AGR 1953-54, pp. 90-91)

Unless otherwise expressly provided, if a person, against whom an assessment has been made or a tax levied, claims that the assessment or tax or any part of the assessment or tax is invalid for any reason provided in subdivisions (1) to (6), inclusive, the assessment or tax may be abated, or the tax refunded if paid. The board of county commissioners may abate or refund, in whole or in part, the invalid assessment or tax in the following cases only:

(1) If an error has been made in any identifying entry or description of the real property, in entering the valuation of the real property or in the extension of the tax, to the injury of the complainant;

(2) If improvements on any real property were considered or included in the valuation of the real property, which did not exist on the real property at the time fixed by law for making the assessment;

(3) If the complainant or the property is exempt from the tax;

(4) If the complainant had no taxable interest in the property assessed against the complainant at the time fixed by law for making the assessments;

(5) If taxes have been erroneously paid or error made in noting payment or issuing receipt for the taxes paid;

(6) If the same property has been assessed against the complainant more than once in the same year, and the complainant produces satisfactory evidence that the tax for the year has been paid. However, no tax may be abated on any real property which has been sold for taxes, while a tax certificate is outstanding. (SDCL 10-18-1) (AGR 1955-56, pp. 69-70 & pp. 201-202)

The board of county commissioners may compromise, abate or rebate taxes in the following cases:

(1) The board may abate any or all of the delinquent taxes and penalty on real property if taxes remain unpaid and the property has been offered for sale as required by the code for two successive years and not sold because of depreciation in the value of the property or otherwise, or if any property has been bid in by the county and one year has elapsed since the bid;

(2) If the board determines that the full amount of any taxes extended and charged against any real property platted into lots and blocks cannot be realized by a sale of the property or otherwise,

it may settle or compromise any of the taxes for any year or years as in its judgment is in the best interest of the county;

(3) The board may compromise, abate, or cancel any taxes extended against any real property conveyed to the State of South Dakota for the benefit of any of its educational institutions, or when the county has acquired lands through foreclosure of permanent school fund mortgage loans, courthouse building fund loans, jail building fund loans, courthouse and jail building fund loans, or through foreclosure of mortgages pledged to the county to secure county deposits or lands taken in satisfaction thereof;

(4) The board may, as a means of relief, abate in an equitable manner the taxes assessed or extended against real property for the year in which a loss occurred because of flood, fire, storm, or other unavoidable casualty;

(5) Repealed by SL 1992, ch 80, § 148;

(6) If the board determines that the full amount of any taxes extended and charged against a centrally assessed railroad company cannot be realized by a sale of the property or otherwise, and the railroad is in bankruptcy or receivership, the board may settle or compromise any of the taxes for any year or years as in its judgment is in the best interest of the county;

(7) The board may abate or refund the taxes assessed or extended on any real property from which structures have been removed after the assessment date upon verification by the director of equalization;

(8) The board may abate or refund the taxes pursuant to § 10-6A-4;

(9) The board may abate or refund the taxes pursuant to § 10-13-40.4;

(10) The board may abate or refund the taxes pursuant to § 10-4-40.

The amount of any such taxes so compromised, abated, or refunded shall be apportioned pro rata among the several funds and taxing districts affected thereby. (SDCL 10-18-2) (AGR 1955-56, pp.69-70)

Agricultural land owned by a charitable, benevolent or religious society as described in §§ 10-4-9 to 10-4-9.2, inclusive, and used exclusively for charitable, benevolent, or religious purposes upon which the buildings used by such society or institution are situated is exempt from taxation up to but not exceeding eighty acres. Land conveyed by the United States government under 25 U.S.C. § 280, in aid of Indian mission schools is exempt from taxation. However, all other agricultural land owned by such societies or institutions shall be taxed as other agricultural land is taxed. (SDCL 10-4-10) (Cn. XI, 6) (SDCL 10-18-1) (McFarland v. Keenan, 77 SD 39, 84 NW 2d 884 (1957))

The property of a school district, even though rented to private individuals, is exempt from taxation regardless of use (Cn. XI, 5). The school district is exempt from tax liability on the property which it is buying on contract and which is in the use and possession of the fee owner. However, until the title to the property is vested in the school district, it continues to remain subject to taxation by the fee owner. For the purpose of taxation, the person having the legal title or estate is subject to taxation, and not the one who by contract or otherwise has a mere equity therein or a right to compel a conveyance of such legal title or estate to themselves. (AGR 1959-60, p. 343)

Whenever any school fund mortgage or courthouse or jail building fund loan mortgage held by any county is in default and is being refinanced through any other loaning agency, and the total amount due thereon for principal, interest, and taxes is greater than the value of the real estate securing such mortgage, and it is impossible to collect the full amount of said mortgage indebtedness by foreclosure of said mortgage or otherwise, the board of county commissioners may in its discretion compromise the amount due on such mortgage for cash or federal farm mortgage corporation bonds which said compromise shall be in full satisfaction of any such loan if in the opinion of said board such compromise would be to the advantage and best interest of said county. (SDCL 7-19-3)

After a county has sold and issued to a purchaser at any time prior or subsequent to the effective date of this section a deed to any real property for which the county has taken tax title, the county auditor shall forthwith cancel the taxes levied against said real property prior to the sale by the county and enter such cancellation on the records of the county treasurer. Should the tax deed to the county and the county deed to the purchaser be by a court of competent jurisdiction decreed to be void prior to three years after the execution of such tax deed to the county, such taxes shall be reinstated by the county auditor on the records of the county auditor and the records of the county treasurer, and shall again become a lien against said premises. (10-25-40)

The purchaser of a tax certificate on which the land was not legally taxable to the proper person can recover the amount of taxes paid. (AGR 1961-62, pp. 64-65)

Applications for adjustments, compromises, abatements, or refunds shall be subscribed and sworn to by the applicant; shall describe the tax and property involved; shall set out one or more of the grounds for abatement or refund specified in §§ 10-18-1 and 10-18-2 and relied on by the applicant, and shall ask the board of county commissioners to grant the relief required or permitted by law in such cases. (SDCL 10-18-4) Upon receipt of any such application the county auditor shall note the date of receipt thereon and file the same, and he shall present the application to the board of county commissioners at its next regular meeting. The board shall, by a majority vote, either approve or reject the application, in whole or in part. If rejected, a statement of the reasons for such rejection, signed by the chairman of the board, shall be attached to the application. Before the board takes final action it may permit or require the production of additional evidence and the amendment of the application. (SDCL 10-18-5)

10.214 Compulsory Refunds

If the boundary line between any counties is in dispute and a court of competent jurisdiction decides that any certain territory was not situated within the county in which the assessment was made, the county commissioners of the county which erroneously entered such property for taxation and collected taxes thereon by reason of mistake of fact or such dispute as to the boundary line shall, within sixty days after the final determination of the action or litigation, refund to the persons entitled thereto, or to any person that shall have purchased at tax sale any such property, all taxes or money so paid by him, with interest at the rate specified in § 54-3-5.1 for any and all years when assessments of such property were made in the proper county; and the pro rata share of the money so refunded shall be charged to the state and each taxing district which may have assessed any part of such tax. (SDCL 10-18-13)

A tax sale certificate purchaser is entitled to a refund when the record title remained in the vendor, but the ownership and possession of the property had actually exchanged hands and the new owner was tax exempt. (AGR 1955-56, pp. 289-291)

If real property is sold by mistake or wrongful act of the treasurer, the county shall refund the purchaser, his heirs, assigns or personal representatives the amount paid upon the sale and any subsequent taxes paid to protect the tax sale certificate, with interest at the Category A rate of interest as established in § 54-3-16 from the date of the payment. The refund shall continue until paid or until notice is served by the county treasurer of the county, either personally or by registered or certified mail, upon the purchaser, his heirs, assigns or personal representatives, demanding that the certificate be surrendered in for cancellation. The treasurer and sureties on his official bond shall be liable to the county for any amounts so refunded in cases where no tax was due and a sale was made by mistake or wrongful act of the treasurer. (SDCL 10-23-14) (AGR 1955-56, pp. 182-183)

10.215 Municipalities Refusing Concurrence in Abatement or Refund of Taxes

In any case where the concurrence of a municipality in the granting of any abatement or refund is required, the action of the municipality shall be certified to and filed with the county auditor of the county within thirty days after an application for such concurrence shall have been filed with the clerk or the presiding officer of the governing body of such municipality, and if not so filed with said county auditor within such time, the municipality shall be deemed to have concurred in granting the application. (SDCL 10-18-7)

If the certificate of the municipality shows that it refuses concurrence, the board of county commissioners shall cause notice of not less than ten days of a time and place for hearing the controversy to be served upon the municipality and the applicant, at which time and place the municipality and the applicant may be heard and the board of county commissioners shall thereupon decide the matter of granting the application in whole or in part and from which decision, either the applicant or the municipality may appeal to the circuit court in the same form, manner, and time as other appeals are taken from decisions of the board of county commissioners. (SDCL 10-18-8) Concurrence of municipal governing body should precede consideration and approval or rejection by county commissioners of abatement of tax. (AGR No. 69-35)

10.216 Taxes Paid Under Protest

The same right of appeal to the circuit court from the decision of the board of county commissioners, compromising, abating, or refunding any tax, shall exist and be governed by the rules of procedure as appeals from decisions of such board in other matters, the right to proceed under the provisions of this code relating to actions to recover taxes paid, under protest, not being qualified or limited by this chapter. (SDCL 10-18-12) No action may be commenced by the former owner or by any person claiming under him, to recover possession of any real property which has been sold and conveyed by deed for nonpayment of taxes or to avoid such deed, unless such action is commenced within one hundred eighty days after the recording of such deed. No defense may be interposed or maintained by the former owner, or by any person claiming under him, in any action brought to quiet the title in the grantee in any tax deed, or by any person claiming under such grantee, in any tax deed issued and delivered by any county treasurer of any county in this state, unless such defense is interposed within one hundred eighty days after the recording of such tax deed in the Office of the Register of Deeds of the county in which the real estate described in such tax deed is located. (SDCL 10-25-44) No injunction to restrain or delay the collection of any tax claimed to be due may be issued by any court. However, in any case in which, for any reason, it is claimed that any tax about to be collected is wrongful or illegal, in whole or in part, the remedy, except as otherwise expressly provided by this code, is by payment under protest and action to recover, as provided in § 10-27-2. (SDCL 10-27-1) Any person against whom any tax is levied or who may be required to pay the tax, who pays the tax prior to the tax becoming delinquent and under protest to the treasurer authorized to collect the tax, giving notice at the time of payment of the reasons for such protest may, at any time within thirty days thereafter, commence an action against such treasurer for the recovery of the tax in any court of competent jurisdiction. If the court determines that the tax was wrongfully collected, in whole or in part, for any reason going to the merits of the tax, the court shall enter judgment accordingly, and such judgment shall be paid in preference to any other claim against the county, upon the final determination of the action. A pro rata share of the money so refunded shall be charged to the state and each taxing district which may have received any part of the tax. The right of appeal shall exist for both parties as in other civil actions. (SDCL 10-27-2)

10.217 State Board of Equalization

Any owner or taxpayer feeling aggrieved by the decision of the county board of equalization relative to the assessment of its property or any taxing district or governmental subdivision or agency in which such property is located, feeling aggrieved by the decision of the county board of equalization may appeal to the Office of Hearing Examiners. An appeal to the Office of Hearing Examiners from a county board of equalization shall be perfected by mailing or by filing a notice of appeal with the chief administrative law judge, Pierre, South Dakota, no later than the third Friday in May. If perfected by mailing, the postmark shall be conclusive evidence regarding the timeliness of the appeal. The chief administrative law judge shall file a copy of the notice with the county director of equalization within ten days after receipt of notice of appeal. The county director of equalization shall file notice of appeal to the appropriate clerk of the local board of equalization prior to the hearing of the appeal by the Office of Hearing Examiners. The notice shall state informally the substance of the decision appealed from and the grounds upon which appeal is taken. The county board of equalization or any person with pecuniary interest in sustaining its decision, as well as the appellant, may be heard in person or by attorney upon appeals to the Office of Hearing Examiners. Nothing in this section prevents an appeal to the circuit court as provided in § 10-11-44, but an appeal to either tribunal excludes an appeal to the other. (SDCL 10-11-42) Nothing herein prevents an appeal to the circuit court as provided in SDCL 10-11-44, but an appeal to either tribunal shall exclude an appeal to the other.

Whenever assessments may be equalized pursuant to § 10-11-47, the secretary of revenue and regulation shall equalize the assessment of land and structures thereon, separately, by adding to the aggregate value thereof, in every county in which the secretary of revenue and regulation may believe the valuation to be less than required by law for assessment purposes, such rate percent as will raise the same to its proper proportionate value, and by deducting from the aggregate assessed value thereof, in every county in which the secretary of revenue and regulation may believe the value to be more than required by law for assessment purposes, such percent as will reduce the same to its proper proportionate value. Town and city lots shall be equalized in the same manner as herein provided for equalizing lands. Any person aggrieved by the actions of the secretary of revenue and regulation taken pursuant to this section and §§ 10-11-47 and 10-11-50 may appeal to the Office of Hearing Examiners, which appeal shall be taken and conducted pursuant to the provisions of chapter 1-26. A decision of the Office of Hearing Examiners shall be final without further agency action. (SDCL 10-11-48)

On or before the fourth Monday in August, the Department of Revenue and Regulation shall transmit to each county auditor a certificate, specifying the percent added to or deducted from the valuation of each class of real property in the several counties of the state and the adjustment made pursuant to § 10-13-37. The certificates shall show the equalized valuation of all property within such county assessed by the secretary of revenue and regulation as required by law. If equalization is made pursuant to subdivision 10-11-47(2), the certificate shall show the levy or levies for state purposes made by the secretary of revenue and regulation. (SDCL 10-11-51) The county auditor shall add to or deduct from each tract or lot of real property in his county the required percent of the valuation thereof, as it stands after the same has been equalized by the county board of equalization, adding in each case any fractional sum of fifty cents or more, and deducting in each case any fractional sum of less than fifty cents, so that the value of separate tracts or lots contain no fraction of a dollar. (SDCL 10-11-53)

10.218 Tax Liens

Repealed SDCL

10.219 Sales Exempt from State Sales Tax

There are hereby specifically exempted from the provisions of this chapter and from the computation of the amount of tax imposed by it, the gross receipts from sales of tangible personal property, any product transferred electronically, and services to the United States, to the State of South Dakota or to any other state of the United States or the District of Columbia if the other state provides a reciprocal exemption for South Dakota, to public or municipal corporations of the State of South Dakota or of any other state of the United States or the District of Columbia if the other state provides a reciprocal exemption to South Dakota public or municipal corporations, to any nonprofit charitable organization which devotes its resources exclusively to the relief of the poor, distressed or underprivileged, and has been recognized as an exempt organization under § 501(c)(3) of the Internal Revenue Code, or to any Indian tribe. (SDCL 10-45-10) There are specifically exempted from the provisions of this chapter and from the computation of the amount of tax imposed by it, gross receipts from the sale of gasoline, motor fuel, and special fuel subject to tax under chapter 10-47B. (SDCL 10-45-11)

There are specifically exempted from the provisions of this chapter and from the computation of the amount of tax imposed by it, the gross receipts from the following:

(1) Sales of tickets or admissions to the grounds and grandstand attractions of state, county, district, regional, and local fairs;

(2) Admissions to nonprofit historic sites and repertory theater performances operated by nonprofit organizations;

(3) Admissions to community operated celebrations and shows sponsored by a chamber of commerce or other similar nonprofit organization if the county or municipality in which the activity takes place officially sponsors the activity and no charge is made to the operators of the celebration or show for the use of county, city or town facilities or services;

(4) Admissions to events or receipts from activities sponsored and operated by colleges or vocational schools or elementary or high schools or related clubs or supporting organizations approved or supervised by a school or college when the entire net proceeds are spent for educational purposes and any associations of them and receipts from tangible personal property or any product transferred electronically sold at such events. However, receipts from tangible personal property or any product transferred electronically sold at such events or activities are included in the measure of sales tax at the time of purchase by the college or school or related club or supporting organization;

(5) Religious, benevolent, fraternal, youth association or charitable activities, including any bingo or lottery conducted pursuant to § 22-25-25, where the entire amount of such receipts after deducting all costs directly related to the conduct of such activities is expended for religious, benevolent, fraternal, youth association or charitable purposes, and, except for any bingo or lottery, the receipts are not the result of engaging in business for more than three consecutive days. However, receipts from tangible personal property, any product transferred electronically, or services purchased for use in the activity are included in the measure of sales tax;

(6) Sales of tangible personal property or any product transferred electronically when the net receipts therefrom are used primarily for the restoration or maintenance of the Governor's mansion and capitol grounds;

(7) Any charge or entry fee made to persons for engaging in participatory events limited to tournaments, contests and league activities. However, receipts from tangible personal property, any product transferred electronically, or services purchased for use in tournaments, contests and league activities shall be included in the measure of the tax imposed by this chapter;

(8) Admissions to events or receipts from activities sponsored and operated by county or municipal historical societies or centennial committees when the entire net proceeds are spent for centennial celebration purposes. However, receipts from tangible personal property, any product transferred

electronically, or services purchased for use in the activity are included in the measure of sales tax;
(9) Religious, benevolent, fraternal, youth association or charitable activities conducted at county fairs, if the entire amount of such receipts after deducting all costs directly related to the conduct of such activities is expended for religious, benevolent, fraternal, youth association or charitable purposes, and the receipts are not the result of engaging in business for more than five consecutive days. However, receipts from tangible personal property, any product transferred electronically, or services purchased for use in the activity are included in the measure of sales tax;
(10) Admissions to circus performances sponsored or operated by religious, benevolent, fraternal or youth associations, if the entire amount of the receipts after deducting all costs directly related to the conduct of the circus performances is expended for religious, benevolent, fraternal, youth associations or charitable purposes;
(11) Admissions to events or receipts from activities sponsored and operated by religious, benevolent, or charitable organizations for a period not to exceed thirty days in any calendar year, if the entire amount of the receipts after deducting all costs directly related to the conduct of the event or activity is expended for the benefit of homeless persons. (SDCL 10-45-13)

10.301 County Purchasing Committee

The board of county commissioners of any county of the State of South Dakota may appoint one of its members to act with the county auditor and the county treasurer as a purchasing committee for all supplies required for the offices of county auditor, county treasurer, register of deeds, state's attorney, and sheriff. After a purchasing committee has been established in any county, no supplies for any of such offices shall be purchased except by such purchasing committee. The members of the committee shall receive no compensation for the performance of their duties as such purchasing committee other than or in addition to their regular compensation as county officers. (SDCL 7-28-1)

A county commissioner may not sell merchandise to the county, not even on the ground of convenience or necessity (AGR 1937-38, pp. 116-117) Likewise, a county may not purchase from a company of which one of its commissioners is a stockbroker. (AGR 1947-48, p. 214) The South Dakota State Prison Industries constitutes the operating organization for all of the industries now established at the state penitentiary, including the license plate plant, furniture shop, bookbindery, and sign shop. The prison industries shall also embrace any new industry that is established by the Department of Corrections at the state penitentiary or any other facility for the employment of inmate labor. (SDCL 24-7-1) The director of prison industries shall sell the products and services of the various prison industries to the federal government, states and subdivisions thereof, and to individuals. The director, with the approval of the secretary of corrections, may execute such contracts on behalf of the prison industries as may best promote the successful operation thereof. (SDCL 24-7-16)

10.302 Bids Required for County Contracts

All contracts of any public corporation whether for the construction of public improvements or contracts for the purchase, lease or rental of materials, supplies or equipment, when the contracts involve an expenditure equal to or in excess of the amount provided for in SDCL 5-18-3. If a contract does not call for the purchase of materials, supplies or equipment, but it is a contract for services, the county may enter into the contract without advertising for bids. (AGR 1953-54, p. 303) An escalator clause, that is, the specific amount being subject to change upward or downward according to changes in the market price between the time of the bid and the time of delivery, may be made a part of a bid. (AGR 1947-48, pp. 256-257)

Since group health insurance is not within the authority of Chapter 5-18, there is not a requirement that such insurance be purchased on a competitive bid basis. (AGR 77-65)

The governing board of a unit of local government shall be exempted from the provisions of this chapter if it is able to purchase materials, supplies or equipment at a substantial savings at a public sale or auction. Any performance bond required by § 5-21-1 may be waived on items purchased for less than ten thousand dollars at a public sale or auction. The governing board shall contact and attempt to obtain competitive quotations from at least three suppliers of identical or similar material, supplies or equipment. The board may authorize an agent to attend a sale or auction and expend an amount not in excess of eighty percent of the average of the quotations received. A record of the names of the suppliers, the quotations received and the procurement procedures used in purchasing shall be documented, spread upon the minutes and retained on file by the governing board. (SDCL 5-18-18.2)

If the governing body of any public corporation intends to enter into a contract for the construction of a new building or the remodeling or addition to an existing building which involves the expenditure of fifty thousand dollars or more, a contract for any other public improvement which involves the expenditure of twenty-five thousand dollars or more, or a contract for the purchase of materials, supplies, or equipment which involves the expenditure of twenty-five thousand dollars or more, the governing body of the public corporation shall advertise for bids for the project. The advertisement shall appear as a legal notice in the appointed legal newspaper. The advertisement shall be printed at least twice, with the first publication at least ten days before opening of bids. The first publication shall be in the official newspaper or newspapers of the contracting corporation, and the second publication may be in any legal newspaper of the state chosen by the contracting corporation. If the contracting corporation has no official newspaper, the first publication shall be made in a legal newspaper with general circulation in the district, to be selected by the contracting corporation. The advertisement shall state the time and place where the bids will be opened and passed upon by the board. In all notices, the board shall reserve the right to reject any or all bids. If a public corporation lists a bid on the centralized bid exchange pursuant to § 5-18-1.1, the public corporation need not make the second publication required by this section. (SDCL 5-18-3) If a public corporation lists a bid on the centralized bid exchange pursuant to SDCL 5-18-1.1, the public corporation need not make the second publication required by this section.

Any surplus property appraised pursuant to § 6-13-2 at five hundred dollars or less or any animal owned by a municipality for a zoo may be sold by the governing board at a private or public sale without notice. The governing board of the political subdivision shall give notice of the sale of all other surplus property, including property created as a result of an educational program in a school, by publishing a notice of the sale at least twice, with the first publication not less than ten days prior to the date of the sale. The first publication shall be in the official newspapers of the political subdivision and the second publication may be in any legal newspaper of the state chosen by the governing board of the political subdivision. If the political subdivision has no official newspaper, the first publication shall be made in a legal newspaper with general circulation in the area, to be selected by the governing board of the political subdivision. The notice shall describe the property to be sold and the time when bids will be opened. The governing board may open the bids or may designate an official and a witness to open all bids prior to the meeting of the governing board and shall state such in the notice of sale. Property to be transferred to another political subdivision pursuant to § 6-5-1 need not be advertised. (SDCL 6-13-4)

The governing board of a public corporation may, except where statute prescribes a different procedure, when it determines an emergency to exist involving the health or welfare of its people, spread upon the minutes of its meeting the finding of such emergency, and award bids without advertising therefore. An emergency may be deemed to exist when awaiting regular advertising for bids would seriously impair public services to be provided and rentals are not available on a timely basis. As

far as practicable the board shall secure at least two competitive quotations and retain the same for their files. At the next meeting of the board there shall be spread upon the minutes a statement of the quotations received, identifying the bidder and the amount of the bid. SDCL 5-18-3.1)

Where the contract is one for the construction of a public improvement the advertisement must state where the plans and specifications may be examined. The plans and specifications for the construction of such public improvements shall be and remain on file in the office of the governing body at all times from the beginning of the publication of the advertisement for bids until the completion of the public improvement. The public corporation shall, upon request therefore, furnish at least one copy thereof, without charge, to each contractor resident in South Dakota who intends, in good faith, to bid upon such public improvement, such copies shall be available at the date of the first publication of the advertisement for bids, and the public corporation may require the return thereof at the time of the opening of the bids. (SDCL 5-18-5)

Except as provided in § 5-18-9.4, all contracts of any public corporation, whether for the construction of public improvements or contracts for the purchase, lease, or rental of materials, supplies, or equipment, if such contracts involve an expenditure equal to or in excess of the amount provided for in § 5-18-3, shall be let to the lowest responsible bidder. The governing body may reject any and all bids and re-advertise for proposals if none of the bids are satisfactory, or if they believe any agreement has been entered into by the bidders to prevent competition. (SDCL 5-18-2) The provisions of §§ 5-18-1 to 5-18-17, inclusive, do not regulate or apply to contracts entered into and purchases made by the Department of Transportation or by the Bureau of Administration or to the purchase of electric power, light, water, or gas; or any municipal corporation for the purchase of materials, supplies, or equipment for any utility owned or operated by such municipal corporation, if the purchase does not exceed the limits established pursuant to § 5-18-3; or to contracts of any municipal corporation in time of war to acquire, establish, construct, own, control, lease, equip, improve, maintain, operate, or regulate an airport or landing field for the use of airplanes or other aircraft, of the United States armed forces or its members, students, and mechanics; or to contracts of any public corporation for the purchase of materials, supplies, or equipment from the United States or its agencies; or to equipment repair contracts; or to the contracts of any school district, municipality, or county for the purchase or lease of communications technologies, computers, peripheral equipment, and related connectivity; or to the purchase of surplus property from another public corporation; or to the purchase by one local government entity from the lowest responsible bidder of an item competitively bid in the previous twelve months by itself or another local government entity or the state at the bid price or less; or to animals purchased by a municipality for a zoo. (SDCL 5-18-18)

Where the advertisement for bids is for the construction of a public improvement, each bid must contain a certified check, a cashier's check or draft, for five percent of the amount of the bid, such check to be certified or issued by either a state or a national bank and payable to the public corporation or to an officer of such public corporation letting such contract and inviting bids thereon, or in lieu thereof a bid bond for ten percent of the amount of the bid, such bond to be issued by a surety authorized to do business in this state payable to said public corporation or officer, as a guaranty that such bidder will enter into a contract with said public corporation, its board or officers thereof, in accordance with the terms of such letting and bid in case such bidder be awarded the contract. (SDCL 5-18-6) No bidder shall be required, either in the advertisement for bids or otherwise, to leave his certified check or other guaranty, or bid bond, posted for a longer period than thirty days if his bid is not accepted. The certified check or other guaranty, or bid bond, of the successful bidder shall be returned to him forthwith upon the execution of the contract and surety hereafter provided for. The certified checks or bid bonds of all unsuccessful bidders shall be, by the public corporation, immediately returned to the respective makers thereof and not more than thirty days shall elapse between the opening of the bids and either the

acceptance of the bid of the lowest responsible bidder or the rejection of all of the bids presented. (SDCL 5-18-7)

Notwithstanding SDCL 5-18-6, the requirement of a bid bond, certified check, cash or other security may be waived by public corporations when the bid submitted does not exceed the amount provided for in SDCL 5-18-3.

The sealed bids shall not be opened until the time and place specified in the advertisement therefore, but must be publicly opened and read at said time and place. Any bid may be withdrawn by letter or by telegraphic communications or in person before the time specified in the advertisement therefore. Bids may be modified by mail, telegraphic notice, or facsimile notice received at the place designated in the invitation to bid not later than the time set for the opening of bids. Telegraphic or facsimile modification shall not reveal the bid price but shall provide the addition or subtraction or the modification so that the final prices or terms will not be known to the public corporation until the sealed bid is opened. Any telegraphic or facsimile modification may not be withdrawn after the time set for the opening of bids. Telegraphic modifications must be confirmed in writing by the successful bidder before award of the contract. No bid made shall be changed or altered by telephone. (SDCL 5-18-8) Unless all bids presented are rejected, the lowest responsible bid shall be accepted. If the low bidder is not responsible or the bid is not made in accordance with the requirements of this chapter or the low bid is withdrawn, the bid of the next lowest responsible bidder may be accepted. If the lowest responsible bid exceeds the final estimated project cost by ten percent or less, the Bureau of Administration, acting on behalf of the state, or any other public corporation, may negotiate with that low bidder for the construction of a public improvement or for the purchase of the materials, supplies, or equipment at the most advantageous price. (SDCL 5-18-9) (AGR 1953-54, pp. 21-23)

If after advertising for bids pursuant to § 5-18-3 for the purchase of materials, supplies, or equipment, no bids are received, the governing board of a unit of local government may negotiate a contract for the purchase of the materials, supplies, or equipment at the most advantageous price. However, the materials, supplies, or equipment shall meet the specifications of the original advertisement for bids. The governing board shall contact and attempt to obtain competitive quotations from at least three suppliers. A record of the names of the suppliers, the quotations received and the procurement procedures used in purchasing shall be documented, spread upon the minutes, and retained on file by the governing body. The contract may include a procedure for adjusting prices to meet changing market conditions not within the control of the vendor. The adjustments may not result in increases in the profit of the vendor, and shall be supported by written justification filed with the purchasing agent of the unit of local government. (SDCL 5-18-9.1) If after advertising for bids pursuant to § 5-18-3 for the purchase of materials, supplies, or equipment, firm competitive bids are not received, the governing board of a unit of local government may reject all bids and negotiate a contract for the purchase of the materials, supplies, or equipment at the most advantageous price, provided that the materials, supplies, or equipment meet the specifications of the original advertisement for bids. The governing body shall contact and attempt to obtain competitive quotations from at least three suppliers. A record of the names of the suppliers, the quotations received, and the procurement procedures used in purchasing shall be documented, spread upon the minutes, and retained on file by the governing board. The contract may include a procedure for adjusting prices to meet changing market conditions not within the control of the vendor. The adjustments may not result in increases in the profit of the vendor, and shall be supported by written justification filed with the purchasing agent of the unit of local government. (SDCL 5-18-9.2)

The statutory requirement that county contracts must be let to the lowest responsible bidder is for the protection of the public rather than that of the bidders. There is no legally enforceable right vested in the lowest bidder. The lowest bidder is not a “person aggrieved” within the statute providing

for appeal to the circuit court from decisions of the county commissioners. (Tri-State Milling Company v. Board of County Commissioners of Pennington County, 75 SD 466, 68 NW2d 104 (1955))

County contracts in amounts smaller than the statutory requirement for competitive bidding may be made on a competitive basis. Such bidding should be for the best interests of the county. It would not be good business to advertise for competitive bidding where the advertising cost would bear an undue proportion to the amount of expenditures contemplated. (AGR 1955-56, p. 4)

Except as provided in § 5-18-9.4, all contracts of any public corporation, whether for the construction of public improvements or contracts for the purchase, lease, or rental of materials, supplies, or equipment, if such contracts involve an expenditure equal to or in excess of the amount provided for in § 5-18-3, shall be let to the lowest responsible bidder. The governing body may reject any and all bids and re-advertise for proposals if none of the bids are satisfactory, or if they believe any agreement has been entered into by the bidders to prevent competition. (SDCL 5-18-2) Unless all bids presented are rejected, the lowest responsible bid shall be accepted. If the low bidder is not responsible or the bid is not made in accordance with the requirements of this chapter or the low bid is withdrawn, the bid of the next lowest responsible bidder may be accepted. If the lowest responsible bid exceeds the final estimated project cost by ten percent or less, the Bureau of Administration, acting on behalf of the state, or any other public corporation, may negotiate with that low bidder for the construction of a public improvement or for the purchase of the materials, supplies, or equipment at the most advantageous price. (SDCL 5-18-9) (AGR 1955-56, pp. 286-288)

County commissioners do not have the authority to reconsider an award made to the lowest bidder when after the award is made another bidder claims a mistake in his bid which, when corrected, makes him the lowest bidder. (AGR 1957-58, pp. 99-100)

In lieu of accepting any bids received upon any bridge, approach, or abutment, or repair to bridge, or in case of emergency, the board of county commissioners may, if in their judgment such bridge or piece of work may be procured for less money than the amount of any bid submitted, cause the same to be built by day labor by regular county labor and county-owned equipment. Such construction shall be in charge of the county highway superintendent and he shall hire a foreman, purchase the necessary material, and hire the necessary labor for the construction of each and every such bridge, or piece of work, and such work shall be done in accordance with plans and specifications therefore furnished by the Department of Transportation the same as any other bridge or piece of work let by contract. (SDCL 31-14-21) The county highway superintendent shall keep a careful and itemized account of the quantity and cost of all materials and labor used in the construction of each such bridge or piece of work, in a standard form prescribed by the Department of Transportation, and such cost statement shall be filed with the county auditor and a copy transmitted to the department as in the case of the cost statement of any other bridge or piece of work as provided in this chapter. (SDCL 31-14-22)

10.303 County Contracts

All contracts shall be made and set forth in writing and shall be signed on behalf of the public corporation by the proper officials and with the formalities required by the governing statutes regulating the particular public corporation involved. The writing shall embody all of the terms, conditions, and agreements of the contract. If a contract is based upon plans and specifications prepared by an architect or engineer, its terms and conditions shall comply with the provisions provided in the "General Conditions of the Contract for Construction", Fourteenth Edition, by the American Institute of Architects in effect on January 1, 1995, the "ConsensusDOCS 200 Standard Agreement and General Conditions Between Owner and Contractor," by ConsensusDOCS LLC in effect January 1, 2009, or the "Standard General Conditions of the Construction Contract," 1990 Edition, by the Engineer's Joint Contract

Documents Committee, in effect January 1, 1996, except when in conflict with the laws of this state. However, the public corporation may modify or delete any portion of the "General Conditions of the Contract for Construction," "ConsensusDOCS 200 Standard Agreement and General Conditions between Owner and Contractor," or the "Standard General Conditions of the Construction Contract." (SDCL 5-18-11)

All contracts shall be made and set forth in writing and shall be signed on behalf of the public corporation by the proper officials and with the formalities required by the governing statutes regulating the particular public corporation involved. The writing shall embody all of the terms, conditions, and agreements of the contract. If a contract is based upon plans and specifications prepared by an architect or engineer, its terms and conditions shall comply with the provisions provided in the "General Conditions of the Contract for Construction", Fourteenth Edition, by the American Institute of Architects in effect on January 1, 1995, the "ConsensusDOCS 200 Standard Agreement and General Conditions Between Owner and Contractor," by ConsensusDOCS LLC in effect January 1, 2009, or the "Standard General Conditions of the Construction Contract," 1990 Edition, by the Engineer's Joint Contract Documents Committee, in effect January 1, 1996, except when in conflict with the laws of this state. However, the public corporation may modify or delete any portion of the "General Conditions of the Contract for Construction," "ConsensusDOCS 200 Standard Agreement and General Conditions between Owner and Contractor," or the "Standard General Conditions of the Construction Contract." (SDCL 5-18-12) Under any construction contract made or awarded by any public corporation, including the construction, improvement, or repair of any and all ways, roads, or bridges with appurtenances which by law, are under the supervision of the Department of Transportation, or for the construction of buildings or other improvements under the supervision of the Bureau of Administration, the governing body of the public corporation or the Department of Transportation or the Bureau of Administration shall be authorized to include in such contracts provisions for deposit of securities in lieu of sums retained from payments due contractors for work performed pursuant to the terms of the contract. (SDCL 5-18-12.1) Such securities shall include:(1) United States treasury bonds,(2) United States treasury notes,(3) United States treasury certificates of indebtedness,(4) United States treasury bills,(5) Bonds or notes of the State of South Dakota including the South Dakota Building Authority or bonds of any political subdivision in the State of South Dakota,(6) Certificates of deposit of any South Dakota bank,(7) Federal bonds, notes, or other obligations issued by any federal land bank, federal intermediate credit bank, bank for cooperatives, or any or all of the federal farm credit banks,(8) Farmers Home Administration, or other federally insured securities. (SDCL 5-18-12.2) No amount of such retained payments may be withdrawn in excess of the market value of the securities at the time of deposit or of the par value of such securities, whichever is lower. (SDCL 5-18-12.3) The governing body of the public corporation, the Transportation Commission, and the Bureau of Administration may adopt rules pursuant to chapter 1-26 to implement the provisions of §§ 5-18-12.1 to 5-18-12.6, inclusive, and may enter into a contract or agreement with any bank or trust company located in South Dakota for custodial care and servicing of any securities deposited pursuant to such sections. (SDCL 5-18-12.4) Any interest or income accruing from such securities deposited in accordance with the provisions of §§ 5-18-12.1 to 5-18-12.6, inclusive, and rules and regulations authorized herein, shall be paid, when and as collected, to the contractor who deposited the same. (SDCL 5-18-12.5) The funds retained from payments to contractors for which securities are deposited shall not be subject to the investment restrictions on "public funds" as contained in chapter 4-5. (SDCL 5-18-12.6)

The public corporation may appoint a competent superintendent who may be the architect or engineer furnishing the plans and specifications for such public improvement and such superintendent shall report to the board every thirty days as to the progress and character of the work done by the contractor, and upon the reports of the superintendent payments to the extent provided by the

contract based on the value of the work done and materials furnished shall be promptly made to the contractor from time to time during the process of construction, divided into such installments as the board and the contractor may agree upon at the time of entering into the contract, and which shall be included in and be a part of the terms of the contract. None of such payments, however, shall be held to constitute an acceptance, in whole or in part, by the public corporation prior to making of the final payment and acceptance in full completion of the contract. Final payment of all sums due to the contractor shall be made within thirty days after the completion and acceptance of the public improvement by the public corporation. (SDCL 5-18-14)

Except as provided in § 31-12-15, when any contract is entered into for the construction of public improvement or the furnishing of any material or labor therefore, the contractor is required, before commencing such work, to furnish surety in an amount not less than the contract price, for the faithful performance of the contract, with the additional obligation that the contractor shall promptly pay all persons supplying him with labor or material in the prosecution of the work provided for in the contract. 9SDCL 5-21-1) In case any such public corporation shall fail or neglect to require the execution of the surety provided for in § 5-21-1, such public corporation shall be liable to pay any person who shall have performed labor or furnished any material that entered into the erection, alteration, repair or improvement of such building, the value of such work or material and an action may be maintained therefore; provided, that an action brought under the provisions of this section shall be commenced within ninety days from the acceptance of the work for which the same shall be claimed. (SDCL 5-21-2)(AGR 1959-60, pp. 60-61)

The requirement of a performance security may be waived by public corporations when the bid submitted does not exceed twenty-five thousand dollars. (SDCL 5-21-1.1)

It shall be unlawful for any public corporation or its officers to enter into any contract in violation of the terms of this chapter or chapter 5-21, and any such contract entered into shall be null and void and of no force and effect. (SDCL 5-18-19)

It shall be the duty of every public corporation as defined in § 5-18-1, on entering into a contract for public improvement, to provide in such contract that the contractor to whom the contract is awarded will pay the Department of Labor of South Dakota all contributions and interest due under the provisions of chapter 61-5, on wages paid to individuals employed in performance of said contract. (SDCL 5-18-16) Before final payment may be made on any contract for public improvement awarded after July 1, 1961, the public corporation awarding the contract shall require the contractor to furnish a certificate from the Department of Labor that all contributions and interest due to the Department of Labor in the performance of such contract have been paid. (SDCL 5-18-17)

10.304 Contract Preference to South Dakota Firms

Every commission, board, committee, officer, or other governing body of this state or of any county, township, school district, municipality, and every person acting as contracting or purchasing agent for any such commission, board, committee, officer, or other governing body shall provide in its specifications for material, products, and supplies a specification for the furnishing of such materials, products, and supplies which are found, produced, or manufactured within the State of South Dakota and bids shall be received, under such specification, for such materials, products, and supplies which are found, produced, or manufactured within the State of South Dakota. (SDCL 5-19-1) All requests hereafter made for bids and proposals for materials, products, or supplies to be purchased at public expense shall be made in general terms and by general specifications and not by brand, trade name, or other individual mark. All such requests and bids shall contain therein a paragraph in easily legible print

reading as follows: "By virtue of statutory authority preference will be given to materials, products, and supplies found or produced within the State of South Dakota." (SDCL 5-19-2)

If a contract is let by the state, a department thereof, any county, municipality, school district, or other public corporation of the state for the erection, construction, alteration, or repair of any public building, other structure, or addition thereto, or for any public work or improvement or for the purchase of any goods, merchandise, supplies, or equipment of any character, the contract shall be let to the lowest responsible bidder. However, a resident bidder shall be allowed a preference on a contract against the bid of any bidder from any other state of the United States or any state or province of any foreign country which enforces or has a preference for resident bidders. The amount of the preference given to the resident bidder shall be equal to the preference in the other state or province. (SDCL 5-19-3)

Where two competitive bids are the same and the product of one of the bidders is manufactured in South Dakota, preference is given to the South Dakota product. (AGR 1955-56, pp. 78-79)

The Bureau of Administration shall maintain a current list of all states that have a resident bidder preference law and the amount or percent of preference taken by each state and shall make the list available upon request to any unit of local government. (SDCL 5-19-3.1) The operation of this chapter upon the letting of any public works contract above mentioned, in connection with which funds are granted or advanced by the United States of America, shall be subject to the effect if any, of related laws of said United States and valid rules and regulations of federal agencies in charge, governing use and payment of such federal funds. (SDCL 5-19-7)

5-20-2 Preference to qualified agencies in public purchases.
5-20-3 Superseded.
5-20-3.1 Repealed.
5-20-4 List of products and services conforming to state specifications--Revision of list.
5-20-5 Distribution of list--Amendment of list.
5-20-6 Public purchases directly from qualified agency.
5-20-7 Waiver of preference when products or services unavailable.
5-20-8 Individual or group contracts not prohibited by chapter.

10.305 Presentation of Claims

Before any account, claim, or demand against any county for any obligation, property, or services for which such county is liable may be allowed, the person having such account, claim, or demand, either by himself or agent, shall:

(1) Reduce the same to writing, and shall verify the same to the effect that such account is just and true, that the money therein charged was actually paid for the purposes therein stated; that the property therein charged for was actually delivered or used for the purposes therein stated, and was of the value therein charged; and that the services therein charged were actually rendered and of the value as charged, or in case such services were official, for which fees are prescribed by law, that the fees and amounts charged therefore are such as are allowed by law; and that no part of such account, claim, or demand has been paid; or(2) Present an invoice or verification which shall be attached to a county voucher, the latter being signed or verified by the county official who purchased the property or had the services rendered to the effect that such account is just and true; that the money therein charged was actually paid for the purposes therein stated; that the property therein charged for was actually delivered or used for the purposes therein stated, and was of the value therein charged; and that the services therein charged for were actually rendered and of the value as charged, or in case such services were official, for which fees are prescribed by law, that the fees and amounts charged therefore

are such as are allowed by law; and that no part of such account, claim or demand has been paid. The provisions of this section do not apply to any claim or demand for the per diem of jurors or witnesses fixed by law. (SDCL 7-22-1) Wherever any law of this state requires a claim or account against the state, or any political subdivision thereof, including municipalities and school districts, to be verified or sworn to before an officer authorized to administer oaths, prior to presentation or payment, it shall be a sufficient compliance with such law if the claimant, or authorized officer or agent thereof, in lieu of verification before a notary public shall sign a statement printed or written thereon in the form following: "I declare and affirm under the penalties of perjury that this claim has been examined by me, and to the best of my knowledge and belief, is in all things true and correct." Any person who shall sign a claim or account bearing the statement written or printed thereon as provided for in this section, knowing the same to be false or untrue, in whole or in part, shall be guilty of perjury. (SDCL 4-9-4)

If any judgment is obtained against a county, the board of county commissioners may, at any time after the expiration of six months from the rendition of the judgment, assess and collect a sufficient amount of revenue to pay off and discharge the judgment. The property of the county and of persons owning property situated or liable to taxation therein may not be subject to judgment lien or liens, nor to seizure or sale upon execution or other process of any court. The levy authorized by this section is in addition to the levy authorized in § 10-12-21. (SDCL 7-18-7)

It shall be lawful for the disbursing officers of the state or any of its political subdivisions to pay, or cause to be paid, any lawful claim for salaries, wages, compensation, fees, and expenses due from the state or any of its political subdivisions to any deceased employee thereof, to the spouse or minor children of such employee. Provided, that such claim for salaries, wages, compensation, fees, or expenses has accrued within sixty days prior to the death of such deceased employee. The provisions of this section shall apply only in cases where such deceased employee died possessed of no property, real or personal, except such as is exempt from claims of the creditors of such deceased employee. (SDCL 3-8-8)

10.306 Refusal of Claims approved by Commissioners

The county auditor has the duty to refuse to countersign warrants when he feels the county commissioners were exceeding their powers when they allowed the claims (SD Employer's Protective Assoc. v. Poage, 65 SD 198, 272 NW 806, (1936)) The county treasurer may also refuse to pay a warrant if he has reasonable grounds to question the legality of the warrant or the power of the governing body to allow the claim. The validity of a disputed claim is then determined, if necessary, by a court of competent jurisdiction. (Evans v. Bradley, 4 SD 83, 55 NW 721 (1893))

10.307 Payment of Warrants

Since the county budget system is a method of accounting or bookkeeping by earmarking or appropriating portions of the county's general fund, thus limiting the amount that may be expended during the year for a designated purpose, a warrant drawn to defray the cost of a general county purpose is a draft on the general fund even though it is specifically drawn against an appropriated or earmarked portion.

When a warrant is registered due to lack of a balance in a designated portion of the general fund, it is a general county liability. Such warrants are paid in order of registration when money accrues to the general fund. (AGR 1955-56, p. 268)

No claim against the county shall be paid otherwise than upon the allowance of the county commissioners upon the warrant of the county auditor, except one authorized to be allowed by some

other person or tribunal, in which case the claim shall be paid upon the warrant of the county auditor upon the proper certificate of the person or tribunal allowing the same. (SDCL 7-22-2)

10.308 Registry and Nonpayment of Warrants Due to Lack of Funds

7-22-6 Warrants paid in order of presentation.
7-22-7 Endorsement of warrant for payment by county depository.
7-22-8 Warrant register maintained by treasurer--Form and information shown.
7-22-9 Registration of warrants not paid for want of funds.
7-22-10 Interest payable on warrants not paid at time of presentation.
7-22-11 Annual payment of interest on outstanding warrants--Tax levy for interest payments.
7-22-12 Call of outstanding warrants for annual payment of interest.
7-22-13 Failure of warrant holder to present warrant for annual interest--Failure to notify treasurer of address.
7-22-14 Endorsement and receipt for annual interest paid--Priority preserved despite nonpayment of annual interest.
7-22-15 Warrants paid in order of registration--Call of warrants for payment--Termination of interest.
7-22-16 Purchase of warrants by treasurer prohibited--Forfeiture of amount due.

Before any account, claim, or demand against any county for any obligation, property, or services for which such county is liable may be allowed, the person having such account, claim, or demand, either by himself or agent, shall:(1) Reduce the same to writing, and shall verify the same to the effect that such account is just and true, that the money therein charged was actually paid for the purposes therein stated; that the property therein charged for was actually delivered or used for the purposes therein stated, and was of the value therein charged; and that the services therein charged were actually rendered and of the value as charged, or in case such services were official, for which fees are prescribed by law, that the fees and amounts charged therefore are such as are allowed by law; and that no part of such account, claim, or demand has been paid; or(2) Present an invoice or verification which shall be attached to a county voucher, the latter being signed or verified by the county official who purchased the property or had the services rendered to the effect that such account is just and true; that the money therein charged was actually paid for the purposes therein stated; that the property therein charged for was actually delivered or used for the purposes therein stated, and was of the value therein charged; and that the services therein charged for were actually rendered and of the value as charged, or in case such services were official, for which fees are prescribed by law, that the fees and amounts charged therefore are such as are allowed by law; and that no part of such account, claim or demand has been paid. The provisions of this section do not apply to any claim or demand for the per diem of jurors or witnesses fixed by law. (SDCL 7-22-1)

As soon as there is sufficient money in the special warrant interest fund to pay one year's interest on one or more outstanding warrants, the county treasurer shall notify the holder of the oldest registered warrant or warrants to present the same for payment of interest, and such treasurer shall continue to call all outstanding warrants for payment of interest in the order of registration as rapidly as funds are available therefore. No warrant shall be called for payment of interest until the same shall have been registered for at least one year. (SDCL 7-22-12) Any warrant holder who shall fail to present his warrant to the treasurer within thirty days after the treasurer shall have mailed him written notice to present the same, addressed to such holder's last known address, shall lose his right to payment in order provided in § 7-22-12. No holder of a registered warrant shall be entitled to payment in the order provided in § 7-22-12 unless he shall first have filed with the treasurer a description of the warrant or warrants held by him, and his name and post office address. (SDCL 7-22-13)

10.401 Indebtedness and bond issues

County indebtedness is limited to five percent of the assessed valuation of the taxable property in the county for the year preceding that in which the indebtedness was incurred. Additional indebtedness, not to exceed ten percent of the assessed valuation of the property in the county, is allowed for providing water and sewage, for irrigation, for domestic uses and for other purposes. (Cn. XIII, 4)

It shall be unlawful for the officers of any county, unless specially and expressly authorized by law, to contract any debt or incur any pecuniary liability, unless both the principal and annual interest thereof, in addition to other necessary disbursements, can be paid by the levy for the current year on the taxable property within the county at not exceeding the maximum rate prescribed by law; or in case such levy for the current year has been made, then by levy for the next subsequent year at not exceeding such maximum rate. (SDCL 7-21-16) (Walling v. Lummis, 16 SD 349, 92 NW 1063 (1902))

Every contract made in violation of the provisions of § 7-21-16 shall be null and void in regard to any obligation thereby purported to be imposed on the county, but every such officer who makes or participates in making or authorizes the making of any such contract shall be individually liable for its performance. Every such officer present when such unlawful contract is made, or authorized to be made shall be deemed to have participated in the making or authorization thereof, as the case may be, unless he dissents there from and enters, or causes to be entered, such dissent on the records of such county. (SDCL 7-21-17) (AGR 1957-58, pp. 194-195)

The clerk of each township, third class municipality, or school district, and every municipal auditor shall report to the county auditor of each county in which the municipality or school district is situated, the total indebtedness and the purpose for which issued and the liabilities, assets, resources, and expenditures, and the total receipts and disbursements as of December thirty-first of the preceding year, or as of the closing date of the last fiscal year. The reports shall be filed and kept by the county auditor of each county in a suitable record. However, the county auditor may destroy any record which the records destruction board, acting pursuant to § 1-27-19, declares to have no further administrative, legal, fiscal, research, or historical value. (SDCL 6-9-1) It shall be the duty of the Department of Revenue to compile and publish in convenient form, the reports as furnished to such department and to furnish to each county auditor in the state a copy of the published report thereof, which copies shall be preserved as permanent records by the county auditors of the respective counties. (SDCL 6-9-3)

10.402 Issuance and Sale of Bonds

Detailed provisions on county bond issues are found generally in Chapters 6-8 and 7-24. Some of the more important features of county bonds are outlined in the Handbook.

Every municipality maintaining a debt service fund for the payment of outstanding bonds, and every municipality having outstanding revenue bonds and having accumulated "surplus funds" as contemplated by §§ 9-40-30 and 9-40-32, and every municipality owning a public utility or public utilities and having an accumulation of earned reserve or earned surplus funds there from, and every municipality having sold its bonds, the proceeds from the sale of which, in the opinion of the governing body, are temporarily not required to carry out the purpose for which the bonds were issued shall keep the accumulations in said funds deposited with the lawful depositories, or invested in registered warrants or bonds of any municipal or public corporation, including those of the municipality issuing such bonds, of the State of South Dakota, or bonds of the United States, or bonds or securities of any kind issued by the State of South Dakota. Nothing herein contained, however, shall be deemed to prevent the transfer, when authorized by law, of special assessment bonds and certificates issued on account of any local improvement to the debt service fund for general obligation bonds, the proceeds of

which have been used to finance such improvement. The interest accruing on such investment shall be credited to such fund from which the investment was made. (SDCL 9-22-12) (AGR 1959-60, pp. 361-362)

10.403 Legalizing Bonds Issued Irregularly

As used in §§ 6-8-1 to 6-8-4, inclusive, the term, political subdivision, means any county, township, improvement district, municipality, or school district in the State of South Dakota, and the term, bonds, means any obligation payable at a specified future date, including but without limiting the generality hereof, revenue bonds, assessment bonds, improvement bonds, general obligation bonds, and revenue bonds under chapter 9-38, 9-40, 9-41, or 9-52 and assessment bonds or certificates issued pursuant to chapter 9-43, and improvement bonds issued pursuant to chapter 9-44, and all bonds issued pursuant to §§ 6-3-1 to 6-3-8, inclusive, and all bonds issued pursuant to chapter 7-24 or 7-25A. (SDCL 6-8-1) The provisions of § 6-8-3 apply in all cases where a political subdivision has, prior to January 1, 2001, issued bonds or has theretofore commenced proceedings to issue bonds for any lawful purpose. (SDCL 6-8-2) In all such cases as described in § 6-8-2, the bonds so issued and all proceedings taken before January 1, 2001, for the issuance of such bonds and for the levy and appropriation of taxes, assessments, or revenues for the payment thereof and all covenants heretofore made for the security of such bonds are hereby declared to be valid and legal, notwithstanding any defect or irregularity, other than constitutional defects, in any of said bonds including, but without limitation of the generality hereof, any defect or irregularity in any election, notice of election, publication, or petition required by law, or in any of the obligations issued before January 1, 2001, which are funded or refunded, by bonds heretofore issued or authorized to be issued, including special assessment proceedings and special assessment certificates or bonds issued in lieu thereof; and all such bonds issued pursuant to said proceedings heretofore taken, shall be legal, valid, and binding obligations of the political subdivision issuing the same, notwithstanding any defects or irregularities, other than actions prohibited by the Constitution or omissions or actions required by the Constitution, in the proceedings taken for the issuance of such bonds. (SDCL 6-8-3) Section 6-8-3 shall not be construed as attempting to validate evidences of indebtedness issued by such political subdivision in excess of the constitutional or statutory limitations upon its indebtedness. (SDCL 6-8-4)

10.404 Debt Service for Bond Issues

Every county maintaining a debt service fund for the payment of outstanding bonds shall keep the accumulations in said debt service fund deposited with the lawful depositories or invested in registered warrants or bonds of any municipal or public corporation of the State of South Dakota, including those of the county issuing such bonds, or bonds, notes, or other obligations issued by any federal land bank, federal intermediate credit bank, bank for cooperatives, or any or all of the federal farm credit banks, or obligations of the United States, or bonds or securities of any kind issued by the State of South Dakota, and the interest accruing on such investment shall be credited to such debt service fund. Moneys in any debt service fund shall be invested only in such of the above-named securities as will become due and payable on or before the date when the bonds for the payment of which such debt service fund was created become due and payable, except bonds of the United States or of the State of South Dakota. Where such debt service fund is invested in other bonds of such county, there shall be a levy of a tax upon the taxable property of such county of sufficient amount to pay the interest and also the principal thereof when due and such tax, when collected, shall be returned to the debt service fund for that purpose. In carrying out the provisions of this section, all transactions shall be by resolution of the board of county commissioners which resolution shall be regularly filed and recorded with the county auditor as a public record. (SDCL 7-24-19)

10.405 Refunding bonds

Any bonds may be refunded, whether or not the bonds have matured or are then subject to redemption, by the public body which issued them, or any successor thereof, in the name of the public body which issued the bonds being refunded, without an election, except as provided in § 6-8B-40, but subject to provisions concerning their payment and to any other contractual limitations in the proceedings authorizing their issuance or otherwise appertaining thereto, for any one or more of the following purposes:

(1) For the purpose of extending the maturity date of all or any part of any outstanding bonds for which payment is in arrears, or for which there is not, or it is certain that there will not be, sufficient money to pay the principal or interest on the outstanding bonds as they respectively become due;

(2) For the purpose of reducing debt service costs or affecting other economies;

(3) For the purpose of reorganizing all or any part of the outstanding bonds of a public body in relation to the resources available for their payment; or

(4) To relieve the public body of restrictions imposed by covenants with respect to the bonds being refunded. (SDCL 6-8B-30)

In computing the aggregate amount of indebtedness of any public body for the purposes of § 6-8B-36, bonds which have been refunded, as provided in this chapter, by immediate payment or prior redemption and retirement or by the placement of the proceeds of refunding bonds or investments thereof in escrow, are not deemed outstanding indebtedness as of the date on which sufficient moneys are placed with the paying agent of the outstanding bonds for the purpose of immediately paying, or redeeming and retiring the bonds, or as of the date on which the proceeds of the refunding bonds or investments thereof are placed in an escrow. (SDCL 6-8B-37)

Subject to §§ 6-8B-39 to 6-8B-41, inclusive, a public body may issue refunding bonds to refund one or more or any part of one or more or all issues of its bonds which are outstanding and refunding bonds and bonds authorized for any other purpose or purposes may be issued separately or issued in combination in one series or more by any public body. (SDCL 6-8B-38) No two or more issues or parts of issues of outstanding bonds may be refunded by a single issue of refunding bonds unless all of the outstanding bonds are payable from the same fund or source. (SDCL 6-8B-39) No outstanding bonds may be refunded by an issue of refunding bonds unless either the outstanding bonds and the refunding bonds are payable from the same fund or source or the question of the issuance of the refunding bonds is submitted to and approved by the voters of the public body in accordance with §§ 6-8B-2 to 6-8B-8, inclusive. (SDCL 6-8B-40) No two or more issues or parts of issues of outstanding bonds or refunding bonds authorized for any other purpose or purposes may be combined in one issue where more than one constitutional or statutory debt limitation is applicable to the combination. (SDCL 6-8B-41)

In addition to the provisions of §§ 6-8B-30 to 6-8B-52, inclusive, all refunding bonds shall be issued and sold in accordance with the provisions of §§ 6-8B-9 to 6-8B-24, inclusive. (SDCL 6-8B-42) The principal amount of the refunding bonds may not exceed the amount necessary to retire the refunded bonds with interest, pursuant to § 6-8B-46, or, as to crossover refunding bonds, pursuant to §§ 6-8B-53 and 6-8B-54, plus any costs or expenses associated with the refunding and the issuance of the refunding bonds. (SDCL 6-8B-35)

The proceeds of refunding bonds shall either be immediately applied to the retirement of the bonds to be refunded or be placed in escrow in any financial institution within or without the state which has trust powers, and has complied with the applicable provisions of §§ 51A-5-7 to 51A-5-10, inclusive, to be applied to the payment of the bonds being refunded upon their presentation therefore. (SDCL 6-8B-46)

All bonds issued by any public body pursuant to this chapter, their transfer, and the income there from, are free from taxation within the State of South Dakota, except for estate, inheritance taxes and taxes imposed upon financial institutions under chapter 10-43. (SDCL 6-8B-25)

10.406 Judgment Bonds

If a judgment has been recovered against a county upon any claim and the judgment has become final by expiration of the time for appeal or decision upon appeal, the governing body may be resolution issue the bonds of the county for the purpose of compromising judgment, without submitting the question of the bond issue to a vote of the electors. The bonds shall be issued and sold as provided in Chapter 6-8B and 9-54-12.

10.407 County Building Bonds

Whenever any county having five hundred voters or more shall have been organized for four years or more and the county seat of such county has been permanently located as provided by law and the building or buildings occupied by such county for courthouse, office, or jail purposes are inadequate to the wants thereof or unsafe by reason of risk by fire or otherwise or whenever it is deemed necessary and for the best interests of said county to erect a suitable building or buildings for the care of the poor, such county may issue its bonds for the purpose of purchasing a site for a courthouse, office, or a jail building or for purchasing a site or grounds for a building or buildings suitable for the care of the county poor or for the erection of a courthouse, office, or jail, building or buildings suitable for the care of the poor under the restrictions and according to the provisions of this chapter. (SDCL 7-24-1) Bonds shall be authorized, issued and sold as provided in Chapter 6-8B and SDCL 9-54-12, if a majority of all registered voters voting at the bond election authorizing the bond issue.

10.408 Economic Development Bonds

All powers conferred upon municipalities under chapter 9-54 relating to the power to issue revenue bonds shall also be applicable to any county. 9SDCL 7-18-16) The purpose of this chapter is to stimulate and develop the general economic welfare and prosperity of the state through the promotion and advancement of industrial, commercial, manufacturing, agricultural, natural resources, postsecondary technical education, limited to bonding for public postsecondary technical institutions in operation on July 1, 1981, research, data collection, health service, housing for the elderly, housing for the handicapped, primary, secondary, and postsecondary education, recreational development, and the reduction of water and air pollution resulting from such developments; to encourage and assist in the location of new business and industry in this state and the expansion of existing business development; to assist in the construction of postsecondary technical education facilities, for public postsecondary technical institutions in operation on July 1, 1981; and to promote the economic stability of the state by providing greater employment opportunities and diversification of industry thus promoting the general welfare of the citizens by authorizing all municipalities of the state to issue revenue bonds to finance projects comprising real or personal property or both, useful for any of these purposes.

The purpose of this chapter is also to promote health services, housing for the elderly and housing for the handicapped at reasonable costs, thus promoting the general welfare of the citizens, by authorizing all municipalities of the state to issue revenue bonds to pay, purchase or discharge all or any part of the outstanding indebtedness of any nonprofit corporation incurred in the purchase, construction, reconstruction, acquisition of sites for, enlargement, improvement, or remodeling of health service facilities, housing for the elderly or housing for the handicapped. (SDCL 9-54-1) For the

purposes stated in § 9-54-1, any municipality may issue revenue bonds, the proceeds of which shall be used only to purchase, construct, reconstruct, acquire sites for, enlarge, improve, or remodel buildings, structures, or equipment, and to enter into revenue agreements as defined in § 9-54-3.1 with any person, firm, limited liability company, corporation, or governmental entity, the projects to be situated in any municipality or its environs without limitation as to distance, providing the governing body of the municipality declares that the project, if in being, would promote the welfare of the municipality. (SDCL 9-54-2)

In no case shall any revenue bonds be issued for an amount in excess of the actual cost of the project, including the site therefore and all other items referred to in § 9-54-4. (SDCL 9-54-5) Revenue bonds issued pursuant to this chapter shall not be general obligations of the municipality nor shall they be payable in any manner by taxation. Such revenue bonds shall recite the authority under which they are issued, and shall state that they are issued in conformity with the provisions, restrictions, and limitations of this chapter, and that such bonds and the interest thereon are to be paid from the revenue received from the project financed, in whole or in part, by the issuance of the revenue bonds. (SDCL 9-54-6)

Any county, in order to accomplish the purposes provided in chapter 9-54, may enter into agreements with any other public agency or agencies for joint or cooperative action and such agreements shall be governed by the provisions of chapter 1-24. (SDCL 7-18-17) Any municipality, in order to accomplish the purposes provided in this chapter, may enter into agreements with any other public agency or agencies for joint or cooperative action and such agreements shall be governed by the provisions of chapter 1-24. (SDCL 9-54-11)

10.409 Investment of Funds

Any public funds which will not be needed for current operating expenses may be invested in: (a) securities of the United States and securities guaranteed by the United States government either directly or indirectly including, without limitation, United States treasury bills, notes, bonds, and other obligations issued or directly or indirectly guaranteed by the United States government, or otherwise directly or indirectly backed by the full faith and credit of the United States government; provided that, for other than permanent, trust, retirement, building, and depreciation reserve funds, such securities shall either mature within eighteen months from the date of purchase or be redeemable at the option of the holder within eighteen months from the date of purchase; or (b) repurchase agreements fully collateralized by securities described in (a) and meeting the requirements of § 4-5-9, if the repurchase agreements are entered into only with those primary reporting dealers that report to the Federal Reserve Bank of New York and with the one hundred largest United States commercial banks, as measured by domestic deposits; or (c) in shares of an open-end, no-load fund administered by an investment company registered under the Federal Investment Company Act of 1940, whose shares are registered under the Federal Securities Act of 1933 and whose only investments are in securities described in (a) and repurchase agreements described in (b). (SDCL 4-5-6) Investments of public funds as defined in § 4-5-5 shall be made only after the adoption of a proper resolution by the governing board of such county, municipality, township, or school district. Such resolution shall state the investment policies to be followed by the treasurer thereof. (SDCL 4-5-8)

Chapter 11
Miscellaneous County Provisions

11.001 Social Security Coverage

In order to extend to the officers and employees of the State of South Dakota and its political subdivisions and to the dependents and survivors of such officers and employees the basic protection accorded to others by the federal old age and survivors insurance system embodied in Title II of the federal Social Security Act, as amended, it is hereby declared to be the policy of the Legislature, subject to the limitations of this chapter, that steps be taken to provide such protection to the officers and employees of the State of South Dakota and its political subdivisions on as broad a basis as is permitted under Title II of the federal Social Security Act, as amended. (SDCL 3-11-1) All counties in this state and the officers thereof shall provide sufficient funds to comply with this chapter either in their annual budget or by supplemental budget as provided by law. (SDCL 3-11-14)

The auditor, clerk, or other proper officer of all qualifying political subdivisions shall issue warrants upon the funds in their respective treasuries, not otherwise appropriated, for such amount as may be required to pay the employer's tax upon the wages and salaries of its employees, and may deduct from the wages and salaries of its employees the amount required to pay the employee's tax under the federal old age and survivors insurance system and to pay the same to the division. (SDCL 3-11-16)

There is hereby created a State Social Security and the Internal Revenue Service Division in the office and under the direction of the state auditor. (SDCL 3-11-3) The political subdivision shall make such reports, in such form and containing such information as the administrator may from time to time require and comply with such provisions as the administrator or the secretary of Health and Human Services may from time to time find necessary. (SDCL 3-11-17) The administrator shall promulgate rules, pursuant to chapter 1-26, for the administration of this chapter and in conformity with section 218 of Title II of the federal Social Security Act and federal regulations adopted pursuant thereto. Such rules shall include procedures to determine the extent of coverage within separate coverage groups and prescribing the manner and method of filing reports and paying contributions required under the agreement. (SDCL 3-11-24) Copies of the rules and regulations may be obtained by writing to the Division of Old-Age survivors Insurance in Pierre, South Dakota.

11.002 Retirement Systems

No political subdivision or public corporation, including municipalities, counties, and chartered governmental units, may establish any retirement plan unless such political subdivision or public corporation becomes a participating unit of the system created in this chapter. 9SDCL 3-12-66) Any political subdivision and any public corporation, including municipalities, counties and chartered governmental units in the State of South Dakota, may become a participating unit by a duly passed resolution of its governing body. Any political subdivision not participating in the system on June 30, 1985, may become a participating unit for only its class A members or only its class B members, or for both classes together. If a political subdivision elects to participate for either one class of members or for both classes, all permanent full-time employees in that class or classes shall become members. (SDCL 3-12-67) In the event a participating unit and a nonparticipating South Dakota political subdivision or public corporation enter into an agreement to provide certain public services on a joint basis, they may agree to consider persons employed pursuant to such agreement as if they were solely employees of the participating unit for the exclusive purposes of the system created in this chapter. The total

compensation paid a person because of such employment shall be considered compensation paid him by the participating unit and services rendered by such person because of such employment shall be considered service rendered by him to the participating unit. (SDCL 3-12-68) Employees of an eligible political subdivision or public corporation not participating in the systems consolidated into the system created by this chapter, may become a participating unit in the system if the unit commits to deposit an amount equal to the present value of the benefits earned to date, based on the employee's prior service to the unit to be covered by the system. The expense of the actuarial determination of this amount shall be borne by the applicant. All eligible employees of an applicant shall participate in the system upon admission. If the unit is unable to deposit this amount in a single sum, the unit shall have the option to pay the amount by periodic level installments over a period up to twenty years, the value of which, when discounted for interest at the effective rate, is equal to the amount due at the date of participation. (SDCL 3-12-69)

11.003 Savings bonds through Salary Deductions

The governing bodies of counties, municipalities, political subdivisions, public districts, and other public agencies or subdivisions of the State of South Dakota are hereby authorized to provide for the purchase of United States savings bonds or similar United States obligations by salary or wage deductions for those officers and employees who make written requests for such deductions and such purchases. (SDCL 3-10-1) All auditors, treasurers, and other disbursing officers are authorized to recognize and act upon such requests for salary or wage deductions and to establish special accounts for each such officer or employee so that sufficient funds may be accumulated to the credit of such officer or employee for the purchase of United States savings bonds or similar United States obligations. All funds so accumulated are trust funds. No provision of law prohibiting, restricting, or limiting the assignment or order for wages or salaries shall be deemed in any way to prohibit, restrict or limit the powers conferred in §§ 3-10-1 to 3-10-3, inclusive. (SDCL 3-10-3)

11.004 Civil Defense

Each organized county of this state shall establish a local organization and develop an emergency plan for emergency management in accordance with the state emergency management plan and program. (SDCL 33-15-26)

Each local organization for emergency management shall have a director who shall be appointed by the executive officer or governing body of the county, and who shall have direct responsibility for the development and implementation of emergency and disaster plans, organization, administration, and operation of the local organization for emergency management, subject to the direction and control of the executive officer or governing body. (SDCL 33-15-27)

The director of a local emergency management organization may develop mutual aid arrangements consistent with state plans and programs. The provisions of such arrangements shall be implemented in the event of emergency or disaster. (SDCL 33-15-34)

Each county shall establish an emergency management fund in the office of the county treasurer, which shall be a special revenue fund. Any reimbursement or matching funds for emergency management purposes from any source whatever, shall be deposited in the special emergency and disaster fund and used for emergency management purposes. Withdrawals from this fund shall be made on warrants drawn by the county auditor in the manner provided by law for the ordinary expenditures of such political subdivision. (SDCL 33-15-31)

In addition to the other provisions of this chapter, any county may join with other counties to form emergency management districts. Each county may appropriate money out of the general fund to pay salaries and expenses of such emergency management district. (SDCL 33-15-33)

11.005 Petition for Municipal Incorporation

The application for incorporation shall be by a petition verified by the circulator and signed by not less than twenty-five percent of the qualified voters who are either registered voters in the proposed municipality or landowners in the proposed municipality who are also registered voters of this state. The application shall identify the type of government to be formed, the number of trustees, commissioners, or wards in the municipality, the boundaries and area according to the survey, and the resident population according to the census taken. The application shall be presented at the time indicated in the notice of the application or as soon thereafter as the board of county commissioners can receive and consider the application. (SDCL 9-3-5) If the board, after proof by affidavit or oral examination of witnesses, is satisfied that the requirements of this chapter have been fully complied with, the board shall make an order declaring that the proposed municipality shall, with the assent of the qualified voters who are either registered voters in the proposed municipality or landowners in the proposed municipality who are also registered voters of this state, be an incorporated municipality by the name specified in the application. The name shall be different from that of any other municipality in this state. The board shall also include in the order a date for an election to be conducted pursuant to Title 12. (SDCL 9-3-6)

11.006 Penalty for Failure to Make Report

In any case where any county, municipality, civil township, or school district officer who is required by law to make an official report to any other county, municipality, civil township, or school corporation officer, board, tribunal, or state officer, and who shall willfully fail or neglect to make such report, or fail to perform such official duty, within the time required by law or at least five days thereafter or such longer time as may be specifically stated in such request, the proper official, department, board, or commission to whom such report was required to be made or who shall be authorized to request the same, shall be authorized to procure such required or requested information at the expense of the political subdivision required to furnish the same. (SDCL 6-1-5)

The expense of procuring such required or requested information shall not exceed ten dollars per day and the necessary hotel and traveling expenses. The expenses incurred in procuring such information shall be paid to the state or political subdivision entitled to such report or information from whom such report or information is required at the first regular meeting of the governing body of such political subdivision. Such expense shall be paid from funds available for the payment of salaries or maintenance of the office of such delinquent officer. The officer of such political subdivision whose duty it is to furnish such report or information, and the sureties on his bond shall be liable for the costs and expenses incurred in obtaining such report or information to the political subdivision which has paid same and such subdivision may recover in a civil action against him and his sureties in any court having jurisdiction. (SDCL 6-1-6)

11.007 Weather Modification Fund

The board of county commissioners may appropriate money from the general fund for "weather-modification." The money may be used only for the gathering of information upon, aiding in, or conducting any program for weather modification, as defined by law, within said county, or in conjunction with any other county or counties. The board of county commissioners may not enter into a

contract or agreement for any such purpose except with one who has been licensed pursuant to chapter 46-3A, except for the purpose of gathering information they may enter into a contract or agreement with a state agency not licensed. (SDCL 10-12-18) This appropriation is included in the twelve dollars per thousand dollars of taxable valuation limit.

The Department of Environment and Natural Resources may, at its discretion, cooperate with county programs of weather modification in carrying out the purposes of this chapter, and in addition to the powers of counties specified in § 10-12-18, counties may contribute to and participate in any weather modification program carried out by the state. (SDCL 46-3A-13) The county may not, in cooperation with a private corporation, purchase a weather radar station. (AGR No. 73-31)

11.008 Flood Control

Every county shall have power to enter into agreements with the United States, with the State of South Dakota and with any authorized agency, subdivision, or unit of government, federal or state, to cooperate with and furnish assurances of cooperation and sponsorship as required by federal or state law in preventing or controlling flooding. (SDCL 7-18-14) Every county shall have power(1) To prevent or control flooding within its boundaries which endangers property;(2) To enter into agreements with the United States, with the State of South Dakota, and with any authorized agency, subdivision, or unit of government, federal or state, to cooperate in preventing or controlling such flooding;(3) To acquire by lease, purchase, gift, grant-in-aid, condemnation, or other lawful means and hold in its name for use and control as provided by law both real and personal property and easements and rights of way within the boundaries of the county for all purposes necessary to prevent or control such flooding; and(4) For any and all of the foregoing purposes, to appropriate moneys therefore. (SDCL 7-18-15)

11.009 Preservation for Archaeological Resources

All state agencies, departments, institutions, and commissions, as well as all counties and municipalities, shall cooperate fully with the state archaeologist in the preservation, protection, excavation, and evaluation of specimens and sites. (SDCL 1-20-26)

11.0010 Continuity of Government- Executive, Legislative and Judicial Functions

Because of the existing possibility of attack upon the United States of unprecedented size and destructiveness, and in order, in the event of such an attack, to assure continuity of government through legally constituted leadership, authority, and responsibility in offices of the government of the state and its political subdivisions; to provide for the effective operation of governments during an emergency; and to facilitate the early resumption of functions temporarily suspended, it is found and declared to be necessary to provide for additional officers who can exercise the powers and discharge the duties of Governor; to provide for emergency interim succession to governmental offices of this state, and its political subdivisions, in the event the incumbents thereof (and their deputies, assistants, or other subordinate officers authorized, pursuant to law, to exercise all of the powers and discharge the duties of such offices (hereinafter referred to as deputy)) are unavailable to perform the duties and functions of such offices; and to provide for special emergency judges who can exercise the powers and discharge the duties of judicial offices in the event regular judges are unavailable. (SDCL 1-30-1) In the event that any state officer is unavailable following an attack, and in the event his deputy, if any, is also unavailable, the said powers of his office shall be exercised and the said duties of his office shall be discharged by his designated emergency interim successors in the order specified. Such emergency interim successors shall exercise said powers and discharge said duties only until such time as the

Governor under the Constitution or authority other than this chapter (or other official authorized under the Constitution or this chapter to exercise the powers and discharge the duties of the office of Governor) may, where a vacancy exists, appoint a successor to fill the vacancy or until a successor is otherwise appointed, or elected and qualified as provided by law; or an officer (or his deputy or a preceding named emergency interim successor) becomes available to exercise or resume the exercise of the powers and discharge the duties of his office. (SDCL 1-30-4)

With respect to local offices for which the legislative bodies of municipalities, townships, and counties may enact resolutions or ordinances relative to the manner in which vacancies will be filled or temporary appointments to office made, such legislative bodies are hereby authorized to enact resolutions or ordinances providing for emergency interim successors to offices of the aforementioned governmental units. Such resolutions and ordinances shall not be inconsistent with the provisions of this chapter. (SDCL 1-30-5)

The provisions of this section and § 1-30-7 shall be applicable to officers of political subdivisions (including, but not limited to, municipalities, townships, counties, and school districts) not included in § 1-30-5. Such officers, subject to such regulations as the executive head of the political subdivision may issue, shall designate by title (if feasible) or by named person, emergency interim successors and specify their order of succession. The officer shall review and revise, as necessary, designations made pursuant to this chapter to ensure their current status. The officer will designate a sufficient number of persons so that there will be not less than three, nor more than seven, deputies or emergency interim successors or any combination thereof at any time. (SDCL 1-30-6) At the time of their designation, emergency interim successors shall take such oath as may be required for them to exercise the powers and discharge the duties of the office to which they may succeed. Notwithstanding any other provisions of law, no person, as a prerequisite to the exercise of the powers or discharge of the duties of an office to which he succeeds, shall be required to comply with any other provision of law relative to taking office. (SDCL 1-30-8)

Because of the existing possibility of attack upon the United States of unprecedented size and destructiveness, and in order, in the event of such an attack, to assure continuity of government through legally constituted leadership, authority, and responsibility in offices of the government of the state and its political subdivisions; to provide for the effective operation of governments during an emergency; and to facilitate the early resumption of functions temporarily suspended, it is found and declared to be necessary to provide for additional officers who can exercise the powers and discharge the duties of Governor; to provide for emergency interim succession to governmental offices of this state, and its political subdivisions, in the event the incumbents thereof (and their deputies, assistants, or other subordinate officers authorized, pursuant to law, to exercise all of the powers and discharge the duties of such offices (hereinafter referred to as deputy)) are unavailable to perform the duties and functions of such offices; and to provide for special emergency judges who can exercise the powers and discharge the duties of judicial offices in the event regular judges are unavailable. (SDCL 1-30-1)

11.0011 Continuity of Government- Seat of Government

Whenever, due to an emergency resulting from the effects of enemy attack, or the anticipated effects of a threatened enemy attack, it becomes imprudent, inexpedient, or impossible to conduct the affairs of local government at the regular or usual place or places thereof, the governing body of each political subdivision of this state may meet at any place within or without the territorial limits of such political subdivision on the call of the presiding officer or any two members of such governing body, and shall proceed to establish and designate by ordinance, resolution, or other manner, alternate, or substitute sites or places as the emergency temporary location, or locations, of government where all,

or any part, of the public business may be transacted and conducted during the emergency situation. Such sites or places may be within or without the territorial limits of such political subdivision and may be within or without this state. (SDCL 6-6-1)

During the period when the public business is being conducted at the emergency temporary location, or locations, the governing body and other officers of a political subdivision of this state shall have and possess and shall exercise, at such location, or locations, the powers and functions conferred upon such body and officers by or under the laws of this state. Such powers and functions may be exercised in the light of the exigencies of the emergency situation without regard to or compliance with time-consuming procedures and formalities prescribed by law and pertaining thereto, and all acts of such body and officers shall be as valid and binding as if performed within the territorial limits of their political subdivision. (SDCL 6-6-2)

11.0012 Cancellation of checks or Warrants not Timely Presented

The board of county commissioners may, by resolution, cancel any check or warrant that has not been presented for payment at any time within two years of the date on which the check or warrant was issued. Upon such resolution the county auditor shall note the cancellation in the check or warrant register. (SDCL 7-22-17)

Notwithstanding any provision for cancellation of checks or warrants, the board of county commissioners shall direct the payment of any properly issued check or warrant to any person entitled to payment thereof within a period of six years from date of issue thereof and may direct payment of checks or warrants more than six years from date of issue thereof. (SDCL 7-22-18)

11.0013 Local industrial Development Corporation Assistance

Every county shall have power to lease or sell on a negotiated basis and to convey any of its real property to a municipality or the state or another county, or to a nonprofit local industrial development corporation as defined by § 7-29-24 and located therein, to be used by such grantee for an authorized public purpose or industrial development purpose as enumerated in § 9-54-1. Such lease or sale shall be authorized on the terms and in the manner provided by resolution of the county commissioners. (SDCL 7-29-23) The definition, required composition and other matters concerning a “local industrial development corporation” are covered in SDCL 7-29-24.

11.0014 County Provisions not in the Handbook

The South Dakota Codified Laws contain many legal provisions pertaining to the board of county commissioners which are not referred to or discussed in the sections of the Handbook. As the Handbook is intended primarily as a guide for county commissioners, only a few of the powers, duties, liabilities and the procedures to the other county officials and employees are outlined.

It is necessary, therefore, to resort to the SDCL for statutory provisions which are not referred to in the Handbook. Moreover, county officials and their legal advisors must refer to the SDCL cited for the exact phrasing and the detailed legal requirements as the Handbook is intended merely as a convenient and broad outline of the more important powers and duties of the county officials.

Alphabetical Index

ACCOUNTING
4.014 Board of Survey
4.014 County Property
Funds- see individual offices
AGRICULTURE (See also animals; bounties; conservation; irrigation)
5.001 Agriculture extension board, appointment of
5.007 Animal Disease, control of
8.016 Cattle ways over highways
5.001 County agricultural extension services
5.013 Drainage Commission
4.001 Extension Agent
7.107; 7.103 Exhibition building and livestock sales agency
5.003 Fairs, county
11.008 Flood Control
5.009 Hunting licenses
5.010 Insect Control
5.012 Irrigation districts
5.016 Power to construct dams and store water
5.009 Predatory animal control
5.011 Rodent control (see weed and pest control)
5.002 Soil conservation district
5.006 Trees & forest protection
5.016 Watershed districts
11.007 Weather modification fund
5.010 Weed & pest control
AID
FEDERAL
7.205 Airport aid
9.020 Grants for water pollution control
8.204; 8.205 Matching federal aid grants for roads & bridges
8.206 Persons displaced by highway acquisition
STATE
9.002 County & District health units
3.001; 10.006 County cooperation in financing projects
8.204 Grant s for road & bridge construction, matching by county
9.020 Grants for solid waste disposal
9.011 Matching funds for developmental disability services
9.012 Water pollution control grants
AIRPORTS
7.201 General provisions and authority for
7.202 Appropriations for
7.204 Joint county and municipal
7.203 Operation of airport by the county
7.205 State permission required to accept federal airport aid

ALCOHOLIC BEVERAGES
3.028 Licenses and regulation of sales
ALCOHOLIC, DRUG EDUCATION PROGRAMS
9.018 Programs
AMBULANCE (See also health; emergency services)
9.301 Ambulance
ANIMALS
5.007 Diseases, control of
5.009 Predatory animal control
5.011 Rodent control
ANNOUNCEMENTS
3.010 Purchase of advertising time
APPEALS (See county commissioners)
3.005 From county board decisions
APPOINTMENTS (See officers and employees, vacancies)
APPROPRIATIONS (See also budget, finance, funds)
10.111 Expenditures in excess of
10.002 For more than one year
4.2063 Recovery of misappropriated funds
10.107 Time limit on
2.009 Unlawful use of appropriation for personal use
ARCHAEOLOGICAL RESOURCES
11.009 Preservation of archaeological resources
ASSESSMENTS
10.206 General provisions and laws
10.209 Classification and valuation of property within county
10.206 County assessor law
19.206 Dates of
10.207 General Equalization of property
10.208 Equalization of school lands
7.029 Leasehold interests
7.004 Special assessments on tax deed land
10.217 State board of equalization
7.007 Tax deed land after sale
10.213 Special assessments, payment of
COUNTY ASSESSORS
4.219 General provisions
4.220 Deputy
10.207 Director of equalization
4.201 Transfers of real estate
4.018 Educational conferences, expenses for
STATE'S ATTORNEY
3.005; 4.211 Duties
COUNTY AUDITOR
3.027 County seal, use of
4.101 Deputy
4.206; 4.207; 5.003 General duties

10.106 Financial report for budgeting purposes
10.306 Power to refuse claims approved by county commissioners
AUDITS (See also records, county, reports
3.001; 4.012 Auditing of officer's accounts
7.109 Auditing board for audit of building finances
BIDS (see contracts)
COUNTY BOARDS, COMMISSIONERS, DEPARTMENTS, ETC.
4.018 SD Association of County Commissioners
7.203; 7.204 Airport board
7.109 Auditing board
7.011 Appraisal board
9.001; 9.002 Health board
9.004; 9.005 Hospital board of trustees
3.001 Local housing authority
9.010 Mental illness board
4.014 Survey board
8.108 Bridge commission
11.004 Civil defense agency
9.002 Health departments for county and districts
6.101 Library trustees
10.301 Purchasing committee
3.015 Recount board
5.014 Zoning commission
6.001 Education
10.217 Equalization
8.007 Highway survey committee
8.109 Private bridge corporation
9.206 Recreation board
8.002 Unorganized county highway board
5.010 Weed board
FEDERAL
7.205 Federal aviation administration
5.001 Department of agriculture
7.012 Federal district range program (Inspector)
5.009 Fish & Wildlife service (US Dept of Interior)
STATE
10.207 Board of Equalization
10.208 Board of Regents
11.004 Civil Defense Agency
3.023; 4.012; 4.202 Department of Legislative Audit
10.209 Department of Revenue
5.009; 9.207 Game Fish & Parks
9.002; 9.004; 9.007 Health Department
8.002; 8.009; 8.012; 8.013; 8.015; 8.101; 8.103;8.104; 8.205 Highway
8.023 Public Utilities Commission
9.009 Red Cross Seal Commission
9.010; 9.011 Redfield State Hospital & School

9.010; 9.011 School & Home for the Mentally Retarded
10.304 SD Division of Rehabilitation Services
5.001; 5.004; 5.012 South Dakota State University
10.301 SD State Prison Industries
4.105 Veteran's Division
5.016 Water Rights Commission
5.010 Weed Board
BOND ISSUES
7.201 Airport
7.101; 10.407 Building
10.407 County building, election for
9.003 County Hospital
3.023 Divided counties, disposition of
10.408 Economic development bonds
10.409 Investment of funds
10.402 Issuance and sale of
10.406 Judgment bonds
10.403 Legalizing bonds issued irregularly
9.201; 9.202 Purchase of land & bodies of water for parks
10.405 Refunding bonds
10.404 Sinking fund for bond issue
8.108 Toll bridges
10.205 Unorganized county
BONDS, OFFICIAL
4.219 Assessor
2.005 County commissioners
4.102 Deputy Sheriff
5.008 Dipping Vat Inspector
4.001; 4.005; 4.101 General regulations
8.006 Highways, for costs on damage petition for location of
10.303 Performance & payment bond (contracts)
3.005 Prosecution of appeal from decision of county board
4.205 Treasurer
BOUNDARIES
8.015 Access to highway from adjoining property
2.006; 3.019; 3.020; 3.022; 3.023 Changes in
3.026 Civil & congressional townships & villages
3.019 Consolidation of counties
1.002 County
8.011 County highway on state, county or city lines
3.022 Division of counties
8.010; 8.013 Secondary highways on township lines
8.009; 8.013 State & county Highways
BRIDGES (See also bids; culverts; highways)
8.101 General provisions
3.001 Authorization for
8.106 Between counties

8.108 Bridge commission to operate toll bridges
8.102 Construction, supervision of
8.104 Emergency bridge contracts
3.011 Eminent domain, power of
8.204 Federal aid grants for road & bridge construction, match
8.107 Guard rails required on
3.012 Highway guard when repairing
8.105 Inspection of bridges & culverts
8.109 Private bridge construction
8.103 Purchase of materials for construction of
ANNUAL BUDGET (See also appropriations; finance; funds)
10.101; 10.104 Adoption of
10.111 Expenditures in excess of budget appropriations
10.106 Financial report of auditor for budget purposes
10.110; 10.112; 10.201 Tax levy, use of budget in determining
10.107 Time limit on appropriations
10.003; 10.110 Transfer of special funds
10.108 Unpaid claims & incomplete contracts
10.112 Unanticipated expenses
PROVISIONAL BUDGET
10.102 Content of
10.103 Hearing on
SUPPLEMENTAL BUDGET
10.105 General provisions
10.108 Incomplete
10.401 Indebtedness limit/ installment
9.006 Medical services
4.114; 10.302 Personal interest of public officers in
10.303 Progress payments on
9.020 Solid waste disposal
7.006 Tax deed land sale
4.014 Trade-in or exchange stipulation
CORONER
4.210 Duties of
COUNTIES IN GENERAL
3.025 County seat, location of
Consolidation of
3.019 County seat location
3.020 Commissioner districts
7.027 Indebtedness of old counties
7.027 Property of old counties
3.021 Records of old counties
11.010; 11.011 Continuity of government, emergency provisions for
9.104 Day care centers
3.022 Division of
1.004 Home rule charters
3.004 Implied powers of

1.005 Intergovernmental cooperation
1.001 Legal status of
1.003 Limitations on the state government regarding counties
1.002 Names of
1.006 Organization of
1.007 Public nuisances, abatement of
11.002 Retirement systems
9.016 Safety programs
COUNTY HIGHWAY SUPERINTENDENT (See Highways)
COUNTY HOSPITAL (See hospitals)
9.009 County nurse
3.027 County seal
COUNTY SEAT
3.019 Change due to consolidation & otherwise
3.025 Location of
COUNTY COURTHOUSE (See buildings, county, and property)
4.218 General provisions of circuit courts & civil actions
4.103 State's attorney duties
CULVERTS (See bridges; highways)
DAM (See also Irrigation)
5.014 General provisions
7.012 Construction on leased county land
DANCES
9.203 Prohibition of dance hall near county parks
3.029 Regulation of
9.104 DAYCARE CENTERS
10.302 DAY LABOR County highways by
DEBT (See Indebtedness)
2.011; 4.010DEFACTO OFFICERS
4.203 DEPOSITORIES (See Funds)
DEPUTY COUNTY OFFICERS (see officers and employees)
9.011 DEVELOPMENTAL DISABILITIES SERVICES
10.206 DIRECTOR OF EQUALIZATION (see Assessors, county)
DISTRICTS
9.301 Ambulance
11.004 Civil defense
COUNTY COMMISSIONER
2.007 Change of district by alteration or division of counties
2.006 Changes in
3.020 Establishment of districts after boundary /consolidation
5.013 Drainage
9.301 Emergency medical services authority
5.012 Irrigation
9.013 Public hospital
Sanitary (See health)
5.002 Soil Conservation
5.016 Watershed

5.016 Development
9.018 DRUG EDUCATION PROGRAMS
EASEMENTS
7.201 Airstrips
7.019 Granting of such on county land
9.205 Granting of such on county park land
10.408 ECONOMIC DEVELOPMENT BONDS
EDUCATION
6.004 County general school fund
6.002 Duties of county commissioners
6.003 Duties of other county officials
6.001 Education & county administration
6.001-6.101 School districts
ELECTIONS
4.207 Election guidelines
3.014; 4.207 Ballots
3.015 Canvassing board of
3.016; 4.207 Clerks/ Judges of
10.407 County building bonds
3.015 County recount boards
5.016 Drainage district trustees
3.018 Electronic voting system
4.004 Eligibility for county office
1.004 Home rule charters
3.014 Precincts, establishing of
3.015 Recount board
3.002 Referral of ordinances & resolutions
3.015 Validity of ballots
3.017 Voting machines
ELECTIONS TO APPROVE
7.101; 10.407 Building bond issue
2.006 Change in commissioner district
3.026 Civil townships, creation of
3.019 Consolidation or boundary change of counties
8.006 County secondary roads by
3.022 Division of counties
2.010; 4.003 Filling of vacancies
1.004 Home rule charters
9.003 Hospital
5.016 Irrigation district, establishment of
7.104; 7.107 Joint county 7 municipal building constructions
3.025 Location of county seat
3.002 Ordinances & resolutions
10.405 Refunding bond issue
9.012 Sanitary district, establishment of
ELIGIBILITY FOR COUNTY OFFICE (See officers & employees)
EMERGENCY BUDGET (See Budget, supplemental)

9.301 EMERGENCY SERVICES
3.011 EMINENT DOMAIN
EMPLOYEES (See officers & employees)
COUNTY FAIR
5.003 General Provisions
5.005 Exhibits to state fair, appropriations for
5.004 Joint/ Private operation of
FEDERAL GOVERNMENT (See also boards, commission, departments)
3.001; 10.006 County cooperation with
7.019 Donation of county land to
7.025 Exchange of county land with
7.009 Purchases of tax deed land by
FEES (See also officers & employees)
4.015 Officers & employees
4.208 Sheriff
9.020 Solid waste disposal
4.213 State's attorney
GENERAL FINANCE (See also appropriations; budget, annual; funds)
10.002 Appropriations for more than one year
11.006 Failure to publish financial statements
3.023 Financial settlement in divided county
10.003 Fines & penalties, support of public schools
10.001 Importance of
10.005 Rewards for criminals
10.004 Settlements between county officers & county board
10.003 Temporary transfer of funds
5.015 FIRE PROTECTION
11.008 FLOOD CONTROL
FUNDS (See also appropriations, budget, annual, finance)
7.202 Airport
7.105 Auditorium building fund
11.004 Civil defense, special
7.102 courthouse or jail building fund
10.404 Debt service for bond issues
4.203 Depositing & care of county funds
4.013 Embezzlement of
1.004 Expended for preparation of charter
10.006 Federal funds for taxing units
9.017 Home health services revolving fund
10.409 Investment of funds
4.203 Local endowment fund, establishment of
8.201; 8.202 Motor vehicle fund
5.014 Planning assistance funds
4.203 Recovery of misappropriated funds
10.308 Registry & nonpayment of warrants due to lack of funds
5.009 State Game, fish & parks
8.004 Township special highway fund

11.007 Weather modification fund
4.202; 5.009; 8.212; 9.207 GAME FISH & PARKS (See also parks, public)
GIFTS
7.019 Donation of county land to the federal government
8.203 Highway gift funds
9.201 Property for park purposes
HEALTH (See also hospitals, poor relief)
9.019 Air pollution control
9.011 Community developmental disability services
9.002 County, county-city, or district health departments
9.001; 9.002 County board of health
9.103 County care of the sick
9.009 County nurse
9.018 Drug education programs
9.301 Emergency services
3.001 Group hospital & medical insurance
9.017 Home health services
9.003 Hospital, establishment & issuance of bonds for
4.112 Life & health insurance
9.010 Mentally ill, care of
9.005 Nursing home
9.015 Burial permits
9.005; 9.008 Public metal health center
9.001 Responsibility for health conditions
9.016 Safety programs
9.012 Sanitary districts, creation of
9.020 Solid waste disposal
9.001 State board of health
9.015 Vital statistics
9.020 Water pollution control
PUBLIC HEARINGS
8.101 Bridge construction
3.026 Civil township, creation of
8.011 Connections between roads crossing county lines
5.013 Drainage district establishment
8.020 Drainage of county highways
9.201 Park establishment
10.103 Provisional budget
10.105 Supplemental budget
8.023 Transmission lines over highways
5.014 Zoning ordinance
HIGHWAYS (See also bridges, culverts)
8.015 Access to highway from adjoining property
8.004 Aid to townships in maintaining roads
8.205 Allotment of federal funds for county roads
8.008 Bond for highway costs on damage petition
8.101 Bridges

8.016 Cattle ways constructed areas
8.011 Connections between roads crossing county lines
8.001 Control of county highway system
8.005 Control of secondary township roads by county
8.022 Controlled access highway & street facilities
8.005 County control of secondary roads
8.002; 8.004; 8.101; 8.102; 8.105 County highway superintendent
8.009 County highways on state, county or city boundary lines
8.011 Crossing county lines, connections between
8.105 Culverts, inspection of
8.008 Damages incurred by private parties
8.101; 10.302 Day labor construction
8.014 Designation of stop intersections on
8.020 Drainage of county highways
8.015; 8.208 Easements
3.011 Eminent domain, power of
8.204 Federal aid grants for road & bridge construction match
8.016 Fence construction across
8.206 Financial assistance to persons displaced by highway acquisition
3.001 Gas lines across
8.008 Gravel, permission to sell
8.203 Highway gift funds
7.110 Highway shop
8.016 Livestock guars over
3.001; 8.006 Location of highways by county commissioners
8.019 Maintenance of streets in a municipality
8.006 Missouri River flood control projects
8.201; 8.202 Motor vehicle fund
8.017; 8.019 Municipalities, county highways within
8.010 On township boundary line, authority over
3.001 Pipelines across
8.008 Private roads
8.007; 8.009 Procedures followed
8.013 Railroad crossings over
8.209 Registration of county motor vehicles
8.017 Responsibility for repairing
8.012 Restrictions on use of
8.017; 8.014; 8.208; 8.024 Right-of-way
8.207 Road & bridge levies
8.010 Secondary highways on boundary lines
8.018 Snow removal
8.001; 8.002; 8.009; 8.010;8.013; 8.103; 8.104; 8.205; 10.302 State DOT
8.003 Survey of highways before construction
7.029 Tax exemption
TAX LEVIES
8.204 Highway & bridge purposes
8.207 Road & bridge levies

8.021 Transmission lines over
8.002 Unorganized county highway board
3.001; 3.005; 8.006; 8.008 Vacating of
5.010 Weeds, eradication
7.027 HISTORIC SITES & HISTORIC PRESERVATION COMMISSION
9.017 HOME HEALTH SERVICES
COUNTY HOSPITALS (See also Health, poor relief)
9.004 Board of trustees for
9.003 Bonds for
9.005 County aid to municipal hospital
9.003 County wards in private hospitals
9.003; 9.004 Establishment of
3.013 Liability insurance for
9.101 County care of the sick
9.005 Definition of
3.001 Group hospital & medical insurance
9.005 Home for the aged
4.209 Hospitalization of city inmates
9.007 Hospitalization of indigent persons in emergency cases
9.005 Joint operation with a municipality
9.006 Loans & grants for medical services
9.004 Leasing hospital to private operators
9.004 Liens for cost of hospital services
9.008 Mental health centers
9.010 Mental illness
9.011 Mentally retarded, care of
9.013 Public hospital districts
INCOMPATIBLE OFFICES (See officers & employees)
INDEBTEDNESS (See also bond issues, insurance, liability, county)
10.109 Certificates of
3.021; 7.026 Consolidated county, disposition of
10.404 County interest & sinking fund
3.023 Divided counties, disposition of
10.401 Limitations on
10.401 Municipal reports to county auditors
10.105 Restrictions on supplemental budget
10.109 Secured as result of delinquent taxes
INSECT CONTROL (See Agriculture)
INSTRUMENTS
4.021 Acknowledgement of
INSURANCE (See also liability, county)
8.017 Bridge, culvert & highway
7.014 County buildings (fire, windstorm, tornado, hail)
3.013 County hospital
4.204 County property
3.001; 9.014 Group hospital & medical
4.112 Life & health

3.013; 4.001; 4.111 Workmen's compensation/liability
INTEREST RATES
10.308 Registered county warrants, rate of
INVESTMENTS
10.409 County fund in United States Securities
7.102 Money in building fund
IRRIGATION (See also agriculture, dams, lakes)
5.016 Abandonment of dams & artificial lakes
5.013 Drainage districts
5.012 Irrigation districts, establishment of
COUNTY JAIL
4.209 General provisions
4.216 Detention of children
3.001 Sites for
JOINT COUNTY & MUNICIPAL BUILDINGS (See buildings, county)
JUDGES (See courts)
LAKES (See also agriculture, dams, irrigation)
5.016 Abandonment of dams & artificial lakes
9.202 Creation of lakes in county parks
5.016 For storage of water
9.020 Water pollution control
LAND, COUNTY & PRIVATE
8.015 Access to highway from adjoining property
7.201 Airport, use of
7.005 Appraisal of county land acquired by tax deed, sale of
7.002 Classification of
7.026 disposition of land of consolidated county
7.019 Donation of
3.011 Eminent domain
7.024; 7.025 Exchange of
7.023 Execution sales, purchase of land by the county
7.027 Historic sites, acquisition of
7.001 Land administration & management act, scope of
Leases (See also rentals, county property)
7.012 Dam construction on
9.004 Hospital to private parties
7.011 Improvements constructed on
7.010; 7.014; 7.024 Leasing regulations
7.013 Oil rights on
7.021 Private leasing
7.020 Real estate not included in County Land Administration & Management Act
7.010; 7.014; 7.015 Rental regulations on
7.019 Perpetual easements
Purchase of
7.023 Land at execution sales
9.201; 9.202 Land for park purposes
7.022 Real estate agents, employment of

7.017 Reconveyance by quit claim of tax deed property
7.024 Rental arrangements
7.008 Responsibility to clear title after resale of tax deed property
Sale of
7.005 Acquired by tax deed
9.203 Park land surrounding park
7.018 Public sale
7.018 Real estate other than tax deed land
7.009 Tax deed land to the federal government
Tax deed
7.003 acquisition of
7.007 Assessment of tax deed land after sale
7.008 Clearing title to after resale
7.019 Donation of
7.006 Failure to meet contract requirements of sale
7.110 Liens against the property
7.008; 7.016 Quieting title on
7.004; 7.009 Sale of
7.004 Special assessment on
7.029 Tax exemption on county property
3.033 LAW ENFORCEMENT (See court; judges, sheriff)
3.007; 3008LEGAL EXPENSE RELIEF FUND
3.008; 3.010LEGAL NEWSPAPERS (See newspapers)
LIABILITY, COUNTY (See also Insurance)
3.012 Board of county commissioners
10.111 Budget appropriation, expenditures in excess of
1.001 Duties, neglect to perform
3.012; 8.017 Highways, failure to keep in repair
3.013 Hospital insurance
4.111; 4.113 Officers and employees, acts of
3.013; 4.111 Workmen's compensation insurance
6.101 LIBRARIES
LICENSES
3.029 Dance hall operation
4.202 Game fish & parks
9.004 Hospital, county
3.028 Alcoholic beverages
4.202 Motor vehicle licenses
4.201 Marriage
4.202 Transient merchants, licensing and regulation of
3.028 Video Lottery, license fees authorized
11.007 Weather modification
9.020 LITTER DISPOSAL & CONTROL
LOCATION OF FACILITIES
8.101 County bridges
3.019 County seat after consolidation of counties
3.028 LOTTERY, VIDEO; license fees authorized

3.001 MAP OF COUNTY
9.006 MEDICAL SERVICES, LOANS & GRANTS FOR
MEETINGS
4.018 Conventions/ education conferences
2.014 Procedure of
Publication of
3.008 Legal notices/ proceedings
2.012 Time & place of county board meetings
9.010 MENTALLY ILL (See also Poor relief)
9.011 MENTALLY RETARDED (See also Poor Relief)
7.106 MONUMENTS, COUNTY
MILEAGE EXPENSES (See also Officers & Employees)
8.201; 8.202 MOTOR VEHICLE FUND
MUNICIPALITIES
7.204 Airport, joint county & municipal
10.206 Assessors, appointment of
7.104 Building construction jointly with county
3.018 Contract with county for electronic voting system
9.207 Cooperation with county & the Game fish & parks Dept
9.005 County aid to municipal hospitals
9.002 County & district health departments, cooperation with
8.017; 8.019 County highways within
8.207 County levy collected within
4.202 County treasurer delivers municipal funds
7.107 Courthouse, donation of site for
7.201 Easements for airport
7.024 Exchange of property
5.015 Fire protection, agreements w/ other political subdivision
4.209 Hospitalization of city inmates
11.005 Incorporation of
10.207 Local review boards (equalization of assessments)
8.201 Motor vehicle fund
9.005 Nursing homes
1.006 Plats outside
7.029 School district is a “municipal corporation”
9.020 Solid waste disposal, combination with county
8.019 Streets, maintenance by county
10.215 Taxes, municipality refusing concurrence in abatement or refund of
5.014 Zoning
NAMES (GENERAL)
3.026 Civil townships
3.019 Consolidated counties
1.002 Counties
NATIONAL GUARD
7.101 Armory
4.208 Sheriff requests
8.110 NAVIGATION

NEWSPAPERS (See also Notices, official)
3.008 General regulations
3.009 Bulletin board, use of
3.007 Designation of official newspapers
3.007 Photo-offset process
NOTICES, OFFICIAL (See also newspapers)
3.007 Legal & official newspapers
10.212 Delinquent personal property taxes
NURSE, COUNTY (See hospital)
NURSING HOME (See hospital)
OATHS, OFFICIAL
4.006 Administering of
2.005 Commissioners, county
4.101 Deputies & employees
4.020 OFFICE SPACE- general provisions
OFFICERS & EMPLOYEES
APPOINTIVE
11.004 Civil defense director
4.101 Clerks in county officers
10.206 County director of equalization
4.001 County extension agent
3.029 Dance matrons
10.213; 10.214 Delinquent tax collector
5.008 Dipping vat inspector
8.002 Engineer
8.102 Highway inspector
4.001; 8.002 Highway superintendent
9.009 Nurse
7.022 Real estate agents
4.208 Sheriff
4.103 Special assistants to state's attorney
4.105 Veteran's service officer
4.106 Veteran's preference in county employment
5.010 Weed control supervisor
4.104 Welfare worker
DEPUTIES
4.101 Appointment of
4.219 Assessor
4.101; 4.206 Auditor
4.005 Oaths
4.101 Register of deeds
4.102 Sheriff
4.103 State's attorney (deputies & assistants)
4.101 Treasurer
ELECTIVE
4.209 Assessors
4.206; 4.207; 10.106Auditor

4.215 Constables
4.002; 4.210 Coroner
4.002; 4.201 Register of deeds
4.002; 4.208; 4.209Sheriff
4.002; 4.211; 4.212; 4.213State's attorney
4.002; 4.202; 4.205TREASURER
General information, officer& employees
4.014 Accounting for public property
4.012 Auditing the accounts of
10.106 Auditor's financial report for budget purposes
4.013 Blanks & records
4.005 Bonds of
2.003; 4.019 Compatible offices
4.115 Consultants, employment of
11.010; 11.011 Continuity of government emergency procedures for
4.018 County officers' conventions & research
8.004; 8.101; 10.302 Day labor
2.011; 4.010 De facto officers
4.101 Deputies & employees, hiring of
Elective officials
4.002 Application of election laws to
4.003 Terms of
4.004 Eligibility for office
11.010 Emergency interim successors
10.303 Employment Security Department, contractor payments
4.013 False statements
4.015 Fees
4.107 Hours of work
2.003; 4.09 Incompatible offices
4.116 Legal holidays
4.111 Liability of county for illegal acts of
3.013; 4.111 Liability insurance
4.112 Life & health insurance
4.017 Mileage expenses
4.009 Military training
4.013 Neglect of duties
2.005; 4.005 Oath required of
4.001 Officer distinguished from employee
10.004 Officers' financial settlement with county board
4.020 offices for
2.015 Per diem
4.114 Personal interest of public officer
4.201 Photostat machine, use of
4.012 Private audits of
4.110 Public employee unions
4.008 Removal of
4.013; 11.006 Reports, failures to submit

4.013 Reports, required of
11.002 Retirement system
4.015 Salaries
4.003 Terms of elective officers
4.113 Unemployment compensation
2.008-2.010; 4.007-4.009; 4.212 Vacancies
4.108 Vacations
4.106 Veteran's preference in employment
7.013 OIL LANDS
3.002 ORDINANCES & RESOLUTIONS
PUBLIC PARKS
9.202 Acquisition of land surrounding bodies of water
9.207 Cooperation with municipalities & Game Fish & parks
9.206 Cooperation with public corporations
9.201 Establishment of
9.205 Granting easements on park property
9.206 Recreation & playgrounds
9.203 Restrictions on use of park land purchased from county
9.204 Supervision of
PETITIONS
Agriculture
5.013 Drainage districts
5.010 Insect eradication
5.012 Irrigation districts
5.008 Scabies control
11.007 Weather modification
5.010 Weed control
10.208 Assessments, classification of county for
3.006 Board of county commissioners, petitions presented to
Boundaries
2.006 Change in county commissioner districts
3.019 Consolidation & changes in boundaries of counties
10.407 Building bond issue
3.026 Civil townships, creation of
Districts
2.006 Change in county commissioner districts
5.013 Drainage
5.012 Irrigation
9.012 Sanitary
5.016 Watershed
3.022 Division of counties
Highway
8.101 Bridge construction
8.005 Control of secondary township roads by county
8.006 Damages caused by location
8.016 Fence construction across
8.006 Locating of

8.008 Private roads, establishment of
9.003 Hospitals
Land, county
7.005 Sale of county land acquired by tax deed
7.018 Sale of county land other than tax deed land
6.101 Library
11.005 Municipality, incorporation of
5.014 Zoning ordinance change
5.014 PLANNING
PLATS (See Municipalities)
POLLUTION
9.019 Air pollution control
9.020 Water pollution control
POOR RELIEF (See also Health; Hospitals)
9.106 Administration of
9.105 Burial at county expense
9.010 County board of mental illness
9.103 County care of the sick
9.109 County physician for service to the poor
9.007 Hospitalization of indigent persons in emergency cases
9.106 Investigation of treatment of the poor
9.102 Legal residence of needy persons
LIENS ON PROPERTY
9.111; 9.112 Compromise or settlement of
9.111; 9.112 Foreclosure & sale of poor relief lien property
9.111 Mortgages & foreclosure
9.111 Perpetual
9.111 Requirement of
9.010 Mentally ill, care of
9.011 Mentally retarded
9.106 Mistreatment, prohibition of
9.102 Native Americans, indigent
9.114 Public assistance
9.102 Residence for
9.101 Responsibility for
4.104 Welfare workers, employment of
PRECINCTS, ELECTION (See Elections)
PRISONERS (See Jail, county)
PROPERTY, COUNTY (See also buildings, county land, county)
4.014 Accounting
7.003 Acquisition of tax deed land
10.206 Assessment of
7.002 Classification of
7.101 Cooperative projects
3.021; 7.026 Disposition of property of consolidated counties
7.019 Donate or dedicate a highway easement
10.207 Equalization of tax assessment on

4.204 Insurance on
4.014 Inventory on
10.210 Personal property, tax exempt
4.014; 7.005; 7.018 Sale or lease of
7.004 Special assessment
7.029 Tax exemption of
PROPERTY, PRIVATE
10.209 Classification & valuation of such for tax purposes
10.207 Equalization of tax assessment on
PROVISIONAL BUDGET (See Budget)
4.110 PUBLIC EMPLOYEES UNIONS
PUBLIC UTILITIES
7.019 Donation of county lands for utility purposes
3.001 Pipelines & gas mains across highways
8.023 South Dakota Public Utilities Commission
8.021 Telegraph, telephone, and transmission lines
PUBLICATION REQUIREMENTS (general)
7.201 Airports, intent to purchase land for
3.005 Appeals from decisions of the county board
4.012 Audit of county officers' accounts
Budget
10.102; 10.103 Provisional
10.105 Supplemental
3.009 Bulletin board
2.006 Commissioner districts, increase or decrease of
11.006 Financial statements, penalties for failure to publish
Highways
8.109 Bridge, report of private bridge corporation
8.020 Drainage of
8.006 Location of
10.402 Issuance & sale of bonds
7.020 Legal newspapers
3.007 Legal notices
3.008 Official newspapers
3.007 Personal property tax lists, publication of
10.210 Purchase of advertising time
3.010 Proceedings of meetings
Sales, property
3.008 Buildings on county land
3.001 Buildings on county land
9.111 Property acquired under poor relief lien procedure
7.018 Property held for public purposes
7.006 Tax deed land sale, failure to met contract requirements
5.014 Zoning ordinance, notice of hearing on
PURCHASES, COUNTY
3.001 Authorization to furnish office supplies
8.102 Bridge construction materials

4.114; 10.301 Personal interest of public officer in
7.023 Real estate at execution sale
3.012 QUASI-CORPORATION, COUNTY AS
RAILROADS
10.408 Bonds for
8.013 Crossing on highways
REAL ESTATE AGENTS (See Land, county)
RECORDS, COUNTY (See also Audits; Reports)
4.014 Accounting of county property
4.206 Auditor, proceedings of county board
4.206 Auditor & Treasurer quarterly statement
3.021 Consolidated counties
4.011 Destruction of and Inspection
3.024 Distribution of records in a divided county
3.023 Financial settlement in a divided county
4.201 Register of deeds, failure to keep
4.5202 Treasurer, record of
REGISTER OF DEEDS, COUNTY
4.201 Duties of
4.101 Deputy
RENTALS, COUNTY PROPERTY (See also Land, county)
7.014 Distribution of rental proceeds
7.013 Leasing of oil lands
7.022 Real estate agents
7.015 Refunding of rentals paid by mistake
REPORTS (See also Audits; records, county)
4.206; 10.106 Auditor
4.013; 11.006 Failure to make, penalty for
8.109 Private bridge corporations
4.013 Required of county officers
4.202 Treasurer
11.002 RETIREMENT, OFFICERS & EMPLOYEES
ROADS (See bridges; culverts; highways)
9.016 SAFETY PROGRAMS, CONTRIBUTING TO
SALARIES
4.016 Certain county officials, provision for
2.015 County commissioners
10.305 Deceased employees, payment of
10.212 Delinquent tax collector
4.102 Deputy Sheriff
4.015 Fixed salary & fees
4.107 Hours of labor
11.003 Savings bonds through salary deduction
4.208 Sheriff
SALE OF PROPERTY
7.005 County land acquired by tax deed
7.018 County land other than tax deed land

7.019 Property held for public purposes
SALES BY COUNTY (See also Land, county)
10.402 Bonds (general)
Land
7.022 By real estate agents
7.018 Other than tax deed
9.203 Park land surrounding lake
7.005; 7.009 Tax deed
9.111 Property acquired by foreclosure of poor relief lien
7.018 Property held for a public purpose
SANITARY DISTRICT (See Health)
3.027 SEAL, COUNTY
SECONDARY TOWNSHIP ROADS (See bridges; culverts; highways)
8.004 Construction & maintenance, county aid for
8.005 Control of roads by county
8.010 Roads on boundary lines, authority over
SHERIFF, COUNTY
4.208 Deputy authorized
4.208 General provisions & duties of
4.015; 4.208 Fees of
4.209 Jail expenses of prisoners of other jurisdictions
4.017; 4.208 Travel expense of
SINKING FUNDS
10.404 Bond issues, provision for
9.003 Hospital
SNOW REMOVAL
8.018 County snow removal reserve fund
8.018 Township snow removal reserve fund
11.001 SOCIAL SECURITY PROGRAM
9.020 SOLID WASTE DISPOSAL
SPECIAL ASSESSMENTS (See Assessments, general property)
STATE HIGHWAY COMMISSION (See Highways; boards)
STATE'S ATTORNEY
3.005 Additional counsel authorized for county board
3.005 Appeal from decisions of county board
4.103 Assistants & deputies authorized
4.211 Duties of (general)
4.213 Fees & expenses of
4.103 Special assistant authorized
4.212 Vacancy in office
SUPERINTENDENT OF HIGHWAYS (See highways)
SUPPLEMENTAL BUDGET (See Purchases, county)
SURVEYS
8.101 Bridge site surveys by highway superintendent
4.014 County property
8.003 Highway surveys before construction or repair
TAX DEED LAND (See Land, county)

TAX LEVIES
10.201 Certification of
10.201 Correction of
10.201 Determination of annual tax assessment
10.202 Limitations on
10.204; 10.205 Purpose of
SPECIAL
7.105 Auditorium, coliseum, gymnasium, or community houes
8.101 Bridges
9.005 Care of the aged
9.005 County aid to municipal hospital
10.402 County interest & sinking fund
9.003 County wards in private hospitals
7.102 Courthouse, office or jail building
9.104 Day care centers
9.018 Drug education programs
6.002 Excess liabilities of dissolved district
7.103 Exhibition building
5.003 Fairs
5.015 Fire control
5.015 Fireguards
9.002 Health department (county-city, or district)
8.204 Highway & bridge (matching federal aid grants)
7.027 Historic preservation commission
9.003 Hospital (operation & maintenance)
9.003 Hospital (sinking fund)
10.308 Interest on registered warrants
10.406 Judgment against county levy
10.202 Levy limit increased by popular vote
6.101 Library
10.203 Limitation of levies- general exceptions, judgments, sinking funds
9.008 Mental health centers
7.106 Monuments (military memorials)
9.201 Parks (when bonds not issued)
9.207 Parks & recreation areas
9.106 Poor relief fund
5.009 Predatory animal control (sheep & cattle)
5.009 Predator control districts
9.201 Promotion of industrial, tourist & recreational areas
9.0139.206 Public hospital district
8.207 Recreation levy
10.404 Road & bridge levy
8.018 Sinking fund for bond issues
5.016 Snow removal fund
5.016 Watershed district
11.007 Water modification fund
5.010 Weed & pest control

TAXES (GENERAL) (See also Tax levies; taxes, delinquent)
10.213 Abatement, refund, compromise, or cancellation of
7.025 Adjustment of taxes on exchanged county lands
10.206 Assessment of property
3.001 Authorization to levy
4.208 Collection of liens & taxes
10.214 Compulsory refunding of
10.201 County board levies
9.104 Day care centers
10.201 Determination of annual tax levy
9.018 Drug education programs
10.208 Equalization of taxes in counties with school lands
3.005; 10.207 Equalization of the assessment of property
7.029; 10.203 Exception to tax levy limits
5.003 Fair tickets exempt from sales tax
10.202 Maximum tax levies
10.206 Mobile homes
10.215 Municipality refusing concurrence in abatement or refund
10.212 Partial payment of personal property
10.212 Payment of personal & real property taxes
5.009 Predatory animal control fund
10.206 Public shooting areas
10.210 Publication of personal property tax lists
10.204 Purpose of tax levies in organized counties
10.219 Sales exempt from sales tax
10.211 Scavenger tax law
10.217 State Board of Equalization
Tax deed land (see land, county)
7.029 Tax exemption of county property
10.218 Tax liens
10.216 Taxes paid under protest
TAXES & FEES, SHARED WITH COUNTIES
8.207 County general road levy
8.207 County special road levy
4.218 Fines, penalties & forfeitures
4.203 Franchise tax on banks
8.201 License fees for trucks
8.201 Motor vehicle fuel tax
8.201 Motor vehicle license fees
TAXES, DELIQUENT
10.215 Collection of delinquent taxes outside of state
10.203; 10.214 Delinquent tax collector
10.216 Partial payment for
10.210 Personal property tax delinquency
10.211 Publication of personal property delinquent lists
10.212 Supplemental procedure for collection
10.109 Temporary loans secured as a result of

8.023 TELEPHONE SERVICE
TOWNSHIPS
3.026 General provisions
8.004 Aid to townships in maintaining roads
8.101 Bridges/ culverts
8.005 County control of township roads
7.025 Exchange of property
10.207 Local board of review (equalization of assessments)
8.201 Motor vehicle fund
5.015 Rural fire protection
8.018 Snow removal reserve fund
8.202 Special highway fund
4.211 State's attorney represents township for tax appeal
5.014 Zoning
TREASURER, COUNTY
4.101 Deputy authorized
4.202-4.206 Duties of
8.201 Motor vehicle fund, distribution of
10.306 Power to refuse claims approved by county board
4.113 UNEMPLOYMENT COMPENSATION
4.110 UNION, PUBLIC EMPLOYEES
UTILITIES (See Public Utilities)
VACANCIES
Commissioners, board of county
2.008 Creation of
2.010 Filing of
2.009 Removal of
Officers, county (general)
4.009 Appointments to fill
4.007 Creation of
4.008 Removal of
4.211 State's attorney's office
VEHICLES
8.209 County, registration of
8.201 Motor vehicle fund
VETERANS
4.106 Preference in county employment
4.105 Veteran's affairs, administering of
3.028 VIDEO LOTTERY (See also Lottery, video)
VOTERS (See also Elections)
4.207 Absentee
Qualifications of (See Elections)
WARRANTS (See also Claims against county)
4.206 Auditor issues warrants
10.307 Payment of
10.308 Rate of interest
10.307; 10.308 Registry of

10.308 Tax levy for payment of interest on unregistered warrants
9.020 WASTE, SOLID, DISPOSAL OF
5.016 WATER DEVELOPMENT
5.014 WATER STORAGE & CONSERVATION
5.016 WATERSHED DISTRICTS
11.007 WEATHER MODIFICATION
WEED & PEST CONTROL (See also Agriculture)
5.010 Competitive bid requirements
5.010 County land & highway
5.010 County weed board
5.010 Liability for damages
5.010 Tax levy for
WORKMAN'S COMPENSATION (See Insurance)
5.014 Zoning