

STATE OF SOUTH DAKOTA



OFFICE OF ATTORNEY GENERAL

1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501

Phone (605) 773-3215

Fax (605) 773-4106

TTY (605) 773-6585

www.state.sd.us/atg

MARTY J. JACKLEY
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

December 2, 2013

Representative Fred Romkema
Co-Chair, Appropriations
240 Fairway Drive
Spearfish, SD 57783-3110

Senator Deb Peters
Co-Chair, Sagehorn Drive
Hartford, SD 57033

Dear Co-Chairs,

This letter serves as the Attorney General's response to the April 8, 2013, letter of intent concerning the Law Enforcement Officer Training Fund (LEOTF). As of this letter, the Unified Judicial System, the Attorney General and the Department of Corrections have been unable to develop a solution to the fund balance in large part because said parties do not have direct control over the declining revenue source. While we are continuing to work with the Governor's budget office, the Joint Committee on Appropriations may need to take necessary action to ensure that legislative directives are carried out in a fiscally responsible manner in relation to this fund.

As you are aware, South Dakota law specifically provides as follows:

Liquidated costs assessed for law enforcement and judicial expenses for personnel, training, and facilities--Amount. In addition to any other penalty, assessment, or fine provided by law, there shall be levied liquidated costs in the amount of forty dollars for partial reimbursement to state government and its subdivisions for law enforcement and judicial expenses incurred in providing the personnel, training, and facilities relative to the criminal justice system and to the 911 emergency reporting system, on each conviction for the following:

(1) Violation of state statutes or regulations having criminal penalties; or

(2) Violation of county or municipal ordinances.

If a fine is suspended in whole or in part, the liquidated costs for law enforcement and training may not be reduced, except that the judge may waive all or any part of the payment of liquidated costs which would work a hardship on the person convicted or on the person's immediate family.

See SDCL 23-3-52.

South Dakota law further provides that the \$40 liquidation costs be collected by the Clerk of Courts and distributed as follows:

Collection by clerk of courts--Transmittal to state treasurer--Disposition. After a determination by the court of the amount due, the clerk of courts shall collect the amount due and transmit such amount monthly to the state treasurer. The state treasurer shall place thirty dollars of the forty dollar fee into the law enforcement officers training fund, six dollars of the forty dollar fee into the court appointed attorney and public defender payment fund, two dollars of the forty dollar fee into the court appointed special advocates fund, one dollar of the forty dollar fee into the 911 telecommunicator training fund, and one dollar of the forty dollar fee into the abused and neglected child defense fund.

See SDCL 23-3-53.

The South Dakota Supreme Court has provided guidance in relation to the assessment and collection of liquidated costs in *State of South Dakota, ex rel, Marty J. Jackley v. City of Colman*, 790 N.W.2d 491, (2010 S.D. 81). Exhibit A.

Liquidated costs further include an additional \$2.50 for Victim Compensation Surcharge, as well as a UJS court automation variable fee scale of \$3 to \$25.50.

The \$30 portion that makes up the Law Enforcement Training Fund, is budgeted as follows:

- (1) \$3,242,628 Attorney General;
- (2) \$414,449 UJS;
- (3) \$143,075 DOC

December 2, 2013

Page 3

Accordingly the complete break down for a \$105 speeding ticket including fines and costs is attached hereto as Exhibit B.

The Attorney General has conservatively utilized said funds for its statutory obligations. See SDCL 23-3-48 through 51 (Law Enforcement Training) and SDCL 23-3-19.1 through 19.3 (State Forensic Laboratory). An examination of the Attorney General's LEOTF actual expenditures demonstrates a decrease in spending from fiscal year 2008 of \$3,022,649 to fiscal year 2013 of \$2,906,388 despite added responsibilities required by legislative action and court proceedings (namely federal). See Exhibit C Office of Attorney General LEOT Expenditures chart.

The Attorney General is prepared to provide in-depth information and testimony regarding the expenditures of its share of the LEOTF. The Attorney General is further prepared to provide information regarding how the current funding structure is and has been adversely affecting both Law Enforcement Training and the South Dakota Forensic Lab. See Exhibit D, South Dakota Forensic Lab Midwest Salary Comparison chart, and Exhibit E, Argus Leader article, March 10, 2013 (S.D. police trainer cut because of budget).

In relation to the declining funds balance, the Attorney General's Office has met with Legislative Audit, and the Attorney General believes that Legislative Audit is a valuable resource that could further assist in reaching a solution.

I appreciate your attention to these matters and look forward to working with you and providing any requested information to assist in resolving these most important matters.

Sincerely,



Marty J. Jackley
ATTORNEY GENERAL

MJJ/lde
Enc.

cc: Marty Guindon, Auditor General, Department of Legislative Audit
Jason Dilges, Commissioner, Bureau of Finance and Management
Denny Kaemingk, Secretary, Department of Corrections
David E. Gilbertson, Chief Justice, Supreme Court

EXHIBIT A

790 N.W.2d 491
Supreme Court of South Dakota.

STATE of South Dakota, ex rel, Marty J. JACKLEY
and Associated School Boards of South Dakota,
Inc., Plaintiffs and Appellees,

v.

CITY OF COLMAN, Defendant and Appellant.

No. 25588. | Argued on Aug. 25, 2010. | Decided
Oct. 27, 2010.

Synopsis

Background: City brought action for declaratory judgment regarding its practice of ticketing speeding motorists on state highway with a city ordinance violation rather than a state law violation. The Circuit Court, Third Judicial Circuit, Moody County, *Tim D. Tucker, J.*, determined that city did not have authority to enforce city speed limit on state highway. City appealed.

[Holding:] The Supreme Court, *Meierhenry, J.*, held that city's speed limit ordinance for state trunk highway was preempted by state law.

Affirmed.

West Headnotes (5)

^[1] **Automobiles**
🔑 Place and time

City law enforcement are authorized to arrest those who violate state speed limits when the violation occurs on the portion of the state highway passing through a city's jurisdiction. SDCL § 9-29-19.

^[2] **Automobiles**
🔑 Concurrent and conflicting regulations by

state and municipality

City's speed limit ordinance for state trunk highway passing through city limits was preempted by state law; state regulatory scheme gave control of state trunk highways to a state agency, speed limits were set by a state agency and violations were state offenses, and Legislature had not expressly authorized cities to regulate speed limits on state trunk highways. SDCL §§ 1-44-4, 31-1-4, 31-1-5, 32-14-3, 32-25-7.

^[3] **Municipal Corporations**
🔑 Powers and functions of local government in general

Cities have only those powers expressly granted to them by the Legislature.

^[4] **Municipal Corporations**
🔑 Powers incident to execution of those granted

A legislative grant of authority to municipality includes those incidental or implied powers that are necessary to enable a municipality to perform the function authorized; the scope of their implied powers falls under a reasonably strict standard, and whatever latitude these implied powers might include will depend upon the circumstances of each case.

^[5] **Municipal Corporations**
🔑 Concurrent and Conflicting Exercise of Power by State and Municipality

Court finds preemption of local ordinances if the scheme of state regulation is sufficiently comprehensive to make a reasonable inference

that the Legislature left no room for supplementary city regulation.

1 Cases that cite this headnote

Attorneys and Law Firms

*491 [Marty J. Jackley](#), Attorney General, [Jeffrey P. Hallem](#), Assistant Attorney General, Pierre, South Dakota, Attorneys for appellee, State of South Dakota.

[William H. Engberg](#), Pierre, South Dakota, [Richard P. Tieszen](#), [Naomi R. Cromwell](#) of Tieszen Law Office, Pierre, South Dakota, Attorneys for appellee, Associated School Boards.

[Paul M. Lewis](#), [William J. Ellingson](#), Flandreau, South Dakota, Attorneys for defendant and appellant.

Opinion

*492 [MEIERHENRY](#), Justice.

[¶ 1.] The question in this case is whether a city can enforce its speed limit ordinance, instead of state law, on a state trunk highway and thereby direct the fine to city coffers rather than local school districts. This question was brought to the South Dakota Attorney General's attention after the City of Colman, South Dakota, ticketed speeders on State Highway 34 with a city ordinance violation rather than a state law violation. The Attorney General notified Colman that the city did not have authority to enforce the city's speed limit ordinance on the state highway. Colman rejected the Attorney General's opinion and filed an action for declaratory judgment in circuit court. The circuit court agreed with the Attorney General. Colman appeals. We affirm and hold that Colman does not have authority to enforce its city ordinance rather than state law.

[1] [¶ 2.] Highway 34 is part of the state trunk highway system and passes through Colman's city limits. The speed limit on Highway 34 is set by state law and violations are classified as misdemeanors. See [SDCL 32-25-7](#). Colman's city council enacted city ordinance 10.0201, which duplicated the state speed limit and penalty classification. See [SDCL 32-25-7](#). When enforcing the speed limit, Colman's law enforcement officers ticketed speeders with a city ordinance violation rather than a state law violation.¹

[¶ 3.] The main difference between enforcing the city ordinance rather than state law lies in the distribution of the fine proceeds. South Dakota law directs that 65 percent of fines collected from city violations go to the city treasury and 35 percent to the State. [SDCL 16-2-34](#). In contrast, 100 percent of the fines collected from state law violations go to school districts in the county where the fine is assessed. [S.D. Const. art. VIII, § 3](#).²

[2] [¶ 4.] Colman claims it has statutory authority to enforce its own ordinance rather than state law. Colman gleans its authority from the following four statutes: [SDCL 9-31-1](#); [SDCL 9-31-3](#); [SDCL 9-29-1](#); and, [SDCL 32-14-5](#). The first statute, [SDCL 9-31-1](#), gives a city the power to regulate the use of certain vehicles. It provides that "[e]xcept as otherwise provided, every [city] may regulate the use of motor vehicles, bicycles, house cars, house trailers, trailer coaches, traction engines, tractors, and road rollers." *Id.* The second statute, [SDCL 9-31-3](#), grants a city the power to regulate the speed of vehicles. It provides that "[e]very [city] shall have power to regulate the speed of animals, vehicles, motor vehicles, cars, and locomotives." *Id.* The third statute, [SDCL 9-29-1](#), gives a city the power to enforce its ordinances within, and one mile surrounding, the city limits.³ *Id.* Finally, [*493 SDCL 32-14-5](#) provides cities with limited regulatory authority for "traffic on highways under their jurisdiction." *Id.*⁴ Colman claims these statutes, collectively, demonstrate that the Legislature "intended to empower [cities] with the authority to regulate traffic over all territory within their corporate limits."

[3] [4] [¶ 5.] In analyzing Colman's claim, we continue to apply our longstanding rule that cities have only those powers expressly granted to them by the Legislature. [Elkjer v. City of Rapid City](#), 2005 SD 45, ¶ 9, 695 N.W.2d 235, 239. "A grant of authority includes those incidental or implied powers that are necessary to enable a municipality to perform the function authorized." *Id.* (citations omitted). Because cities have "no inherent powers, and none of the attributes of sovereignty," the scope of their implied powers falls under "a reasonably strict standard." *Id.* "Whatever latitude these implied powers might include will depend upon the circumstances of each case." *Id.*

[¶ 6.] We acknowledge that the four statutes Colman relies on give a city the power to regulate certain traffic within its jurisdiction. But we must view the city's limited jurisdiction in the context of the broader jurisdictional scheme of the state highway system. The Legislature categorizes state highways as: (1) municipal streets and alleys; (2) state trunk highways; (3) county highways; and, (4) secondary highways. See [SDCL 31-1-4](#).

[¶ 7.] The Legislature also “clarif[ies] the duties and powers of the various governmental state agencies charged with the administration of the highways in South Dakota.” [SDCL 31-1-5](#).⁵ The Legislature charges the Department of Transportation with the “control[] and supervis[ion]” of “highways designated by statute” as the “state trunk system.” [SDCL 31-1-5\(1\)](#). County commissioners oversee county and secondary highways, and township supervisors administer township highways. *Id.*

[¶ 8.] Additionally, the Legislature specifically gives the State Transportation Commission, a commission in the South Dakota Department of Transportation, the authority to regulate speed limits on the *494 state trunk highway system. [SDCL 1-44-4](#); [SDCL 32-25-7](#). State law outlines how speed limits on state trunk highways are set and what penalties exist for violations:

The Transportation Commission may establish, by rules promulgated pursuant to chapter 1-26, a maximum speed limit of less than that established by §§ 32-25-1.1 and 32-25-4 upon any highway or portion of highway on the state trunk highway system and any portion of highway under the jurisdiction of a state or federal agency if requested by the agency. The speed limit established by the commission is the maximum speed that any person may drive or operate any vehicle or class of vehicle upon that portion of highway. The Department of Transportation shall conspicuously post signs at the beginning and end of a portion of highway to show the maximum speed limit established by the commission on that portion of highway. A violation of any maximum speed limit established by the commission pursuant to this section is a Class 2 misdemeanor.

[SDCL 32-25-7](#).

[¶ 9.] The Legislature’s overall scheme and apportionment of authority over the various highways signals legislative intent to preempt the field. This scheme

confines a city’s authority to the “streets and alleys within the limits of municipal corporations.” [SDCL 31-1-4](#). Other highways are under the supervision and control of other governmental agencies. *See* [SDCL 31-1-5](#). Notably, the Legislature gives the control and supervision of a state trunk highway, such as Highway 34, to the State Department of Transportation and the specific power to set speed limits to the State Transportation Commission. [SDCL 31-1-5\(1\)](#). This delegation of control and supervision of state trunk highways to state agencies demonstrates the Legislature’s intent in this field.

[⁵¶ 10.] We have said that one way to determine if a state law preempts a local ordinance is to look at whether the state law “occup[ies] a particular field to the exclusion of all local regulation.” *In re Yankton County Com’n*, 2003 SD 109, ¶ 15, 670 N.W.2d 34, 39. We find preemption if “the scheme of [state] regulation is sufficiently comprehensive to make [a] reasonable [] inference that [the Legislature] ‘left no room’ for supplementary [city] regulation.” *Id.* ¶ 16, 670 N.W.2d at 39.

[¶ 11.] Here, the regulatory scheme gives control of state trunk highways to a state agency. The speed limits are set by a state agency and violations are state offenses. Moreover, the Legislature has not expressly authorized cities to regulate speed limits on state trunk highways. *See* [SDCL 32-14-3](#). A reasonable inference drawn from the statutes is that the Legislature intended to “occupy the field” of regulating state trunk highways and did not intend to leave “room for supplementary [city] regulation[.]” *See* *Yankton County Com’n*, 2003 SD 109, ¶ 21, 670 N.W.2d at 41. Consequently, we hold that Colman did not have authority to enforce a city speed limit ordinance on state Highway 34.

[¶ 12.] Affirmed.

[¶ 13.] GILBERTSON, Chief Justice, and KONENKAMP, ZINTER, and SEVERSON, Justices, concur.

Parallel Citations

2010 S.D. 81

Footnotes

1 The Legislature has given city law enforcement the power to arrest those who violate state speed limits when the violation occurs on the portion of the state highway passing through a city's jurisdiction. See *South Dakota v. Hirsch*, 309 N.W.2d 832, 835 (S.D.1981); SDCL 9-29-19.

2 The Associated School Boards of South Dakota., Inc. joined the State as a party plaintiff because Colman's enforcement of its ordinance, rather than state law, reduced the amount of money that school districts in the area received.

3 SDCL 9-29-1 provides:

Every [city] shall have power to exercise jurisdiction for all authorized purposes over all territory within the corporate limits and over any public ground or park belonging to the [city], whether within or without the corporate limits, and in and over all places, except within the corporate limits of another [city], within one mile of the corporate limits or of any public ground or park belonging to the [city] outside the corporate limits, for the purpose of promoting the health, safety, morals, and general welfare of the community, and of enforcing its ordinances and resolutions relating thereto.

4 SDCL 32-14-5 provides:

Local authorities may provide by ordinance for the regulation of traffic on highways under their jurisdiction by means of traffic officers or traffic control devices on any portion of the highway where traffic is heavy or continuous or local authorities may prohibit other than one-way traffic upon certain highways and may regulate the use of the highway by processions or assemblages.

5 SDCL 31-1-5 provides:

For the purpose of clarifying the duties and powers of the various governmental state agencies charged with the administration of the highways in South Dakota, the following definitions of highway systems shall be applicable:

- (1) "State trunk system," the highways designated by statute to be controlled and supervised by the Department of Transportation;
- (2) "County highway system," the highways designated by the board of county commissioners in organized counties under the supervision of these bodies that have been approved by the Department of Transportation;
- (3) "Township highways," the secondary highways in organized townships that are administered by a board of township supervisors;
- (4) "County secondary highways," the rural local highways in organized counties, excluding the approved county highway system, that are under the supervision of a board of county commissioners.

EXHIBIT B

FOR \$105.00 SPEEDING TICKET ON INTERSTATE HIGHWAY INCLUDING FINES & COSTS

This is where your \$\$\$ goes...

FINE

\$39.00 - to school district in the county where the violation occurred

COSTS

\$30.00- to the Law Enforcement Officer Training Fund (LEOTF)

-----See ATTACHMENT F for breakdown of budget
\$23.50- to the Unified Judicial System for court automation

\$6.00- to the Court Appointed Attorney & Public Defender Fund

\$2.50- to the Victim's Compensation Fund

\$2.00- to the Court Appointed Special Advocates Fund

\$1.00- to the 911 Telecommunicator Training Fund

\$1.00- to the Abused and Neglected Child Defense Fund

\$105.00 TOTAL

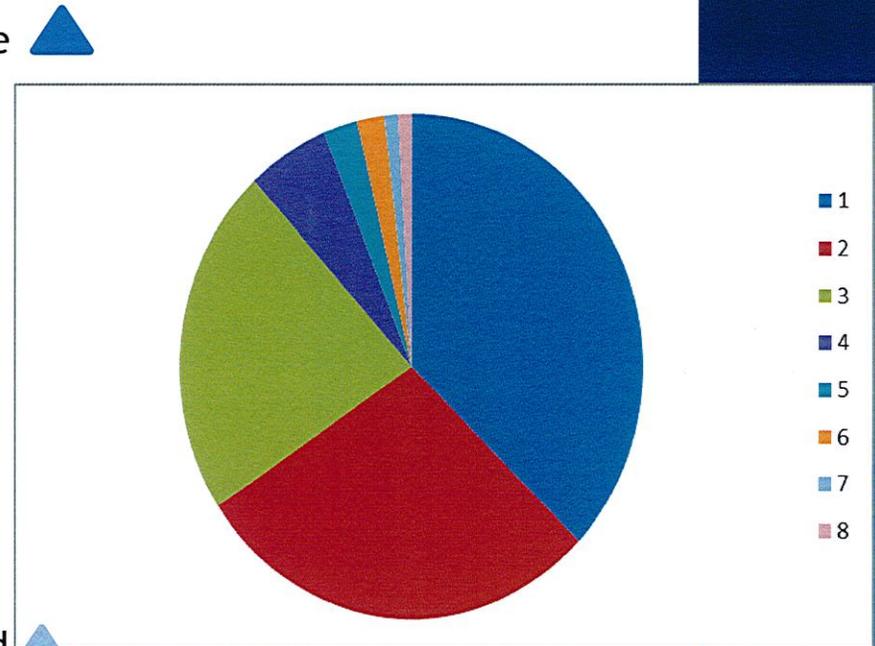
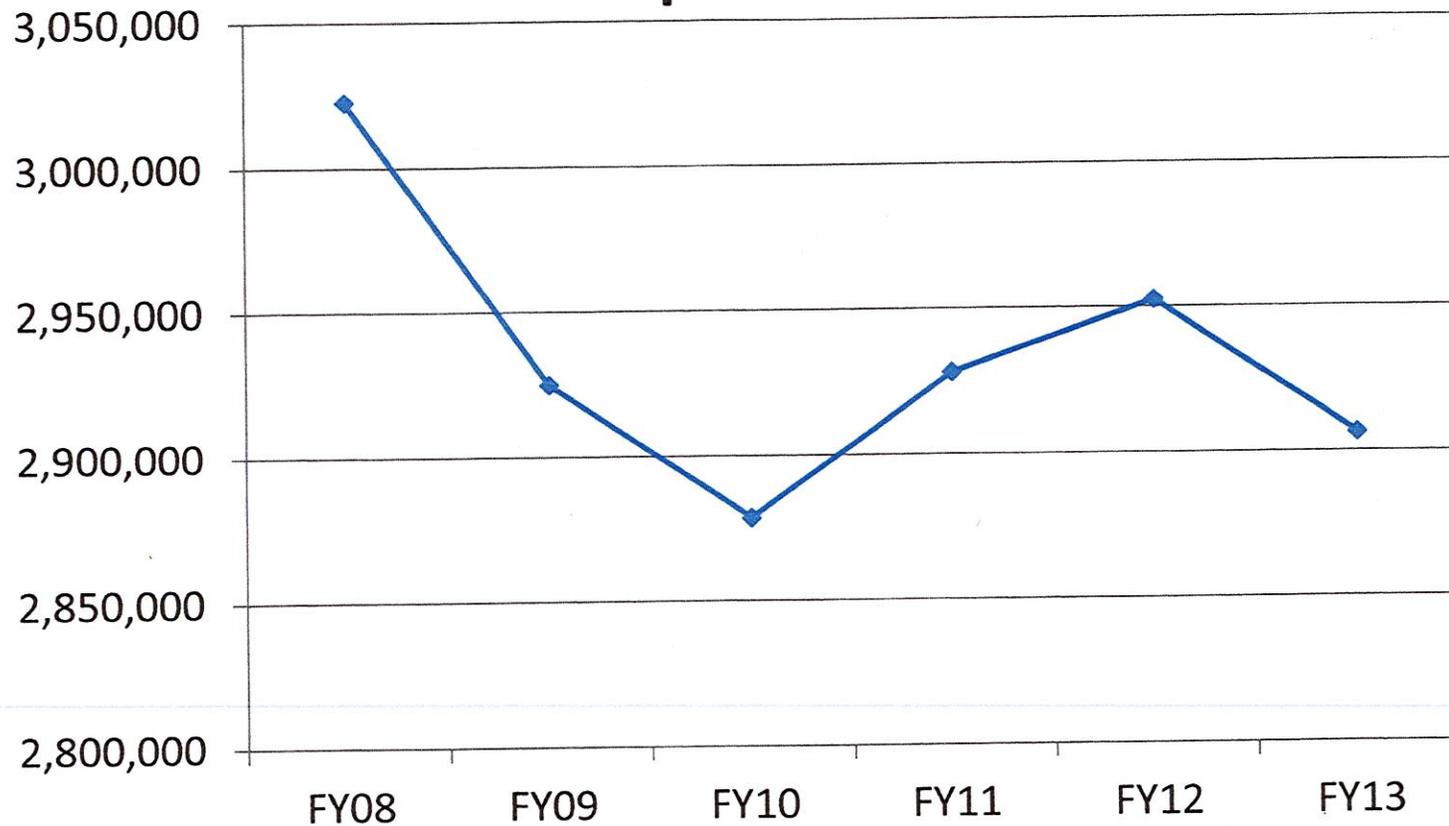


EXHIBIT C

Office of Attorney General LEOT Expenditures



FY08-FY13

EXHIBIT D

SOUTH DAKOTA FORENSIC LAB MIDWEST SALARY COMPARISON

SD Lab Comparisons	Support (E12)	Forensic I (E 14)	Forensic II (E16)	Forensic III (E18)	Lab Director
	Minimal	*Minimal*	*Minimal*	*Minimal*	*Actual*
Sioux Falls		\$39,020- Min.	\$47,756- Min.	N/A	\$82,500
Rapid City	\$30,596- Min.	\$42,161- Min.	\$44,283- Min.	N/A	\$62,400
SD Health Lab		\$29,911-Min.	\$36,596-Min.	\$40,735-Min.	\$85,505
SDFL	\$25,185-Min.	\$29,911-Min.	\$36,596-Min.	\$45,542-Min.	\$71,116
Average	\$27,891	\$35,251	\$41,308	\$43,139	\$75,380

Midwest US Lab Comparisons	Forensic I (E 14)	Forensic II (E16)	Forensic III (E18)	LAB Director
	Midpoint	*Midpoint*	*Midpoint*	*Midpoint*
Illinois State Police	\$65,760	\$73,542	\$82,422	\$101,946
Indiana State Police	\$51,000	\$56,000	\$63,000	\$83,000
Iowa DCI	\$46,051	\$68,203	\$74,132	\$95,951
Kansas KBI	\$41,870	\$50,918	\$53,414	\$96,450
Michigan State Police	\$45,084	\$49,130	\$65,624	\$72,478
Minnesota BCA	\$53,401	\$61,554	\$68,528	\$91,743
Missouri State Police	\$38,040	\$45,960	\$54,360	\$89,892
St. Louis County	\$42,768	\$54,275	\$60,788	\$68,082
Nebraska State Police	\$55,080	\$55,080	\$59,198	\$73,544
North Dakota BCI	\$50,985	\$55,415	\$66,332	\$83,028
Ohio BCI	\$61,383	N/A	N/A	\$76,927
Ohio State Police	\$61,246	N/A	N/A	\$76,927
Hamilton County Ohio	\$41,477	\$51,825	\$65,633	\$93,944
Wisconsin DOJ	\$47,055	\$75,884	\$74,884	\$98,020
Wisconsin DCI	\$39,518	\$61,403	N/A	\$97,665
SDFL	\$37,388	\$45,744	\$56,928	\$73,824
Average	\$48,632	\$57,495	\$65,019	\$85,203

EXHIBIT E

S.D. police trainer cut because of budget

By John Hult

jhult@argusleader.com

Attorney General Marty Jackley agreed Friday to trim one additional training position from the Division of Criminal Investigation as part of final budget negotiations in Pierre.

The loss of a "scenario-specific" trainer brings the number of trainers lost for 2013 to 2.5, and Jackley warned legislators that more could be lost in the future if a budget gap in the state's law enforcement officer training fund isn't addressed soon.

Funding for basic training still is there, but the burden for advanced training could shift to local departments if the trend continues.

"We're moving in the wrong direction," Jackley said.

The fund has run in the red since 2010, Jackley said. He first raised the issue during a January appropriations committee meeting, telling lawmakers he'd need to cut the equivalent of 1.5 employees next year and possibly more unless fees or collections were increased.

About 30 percent of the proceeds from paid criminal fines are put into the fund, but that 30 percent is further divided among the Unified Judicial System, Department of Corrections and Jackley's office.

Jackley then splits his share three ways: Some goes to pay for testing at the state crime lab, some pays for a lawyer to defend the attorney general's office in legal actions, and the remainder pays for officer training.

In the end, of the \$3.74 million expected to flow into the fund this year, only \$1.4 million will be available to train all the officers in the state in basic and advanced techniques.

Beyond completing the 13-week training academy, every officer in the state must complete 40 hours of training every two years. All officers must be certified in firearms and domestic violence resolution every year.

The advanced training can deal with anything from drug detection to computer proficiency.

"It's a complicated profession, and it's changing all the time," said Sioux Falls Police Chief Doug

Barthel, who sits on the Law Enforcement Training Commission and has for eight years. "It's not as though you train an officer and get them started and then they're done. We have to stay one step in front of the bad guys."

During the past decade, the number of officers has edged up steadily, but the training fund balance has continued to drop. For larger departments, such as the Sioux Falls Police Department, much of the annual training can happen in-house. Smaller departments already can and do come to Sioux Falls or Rapid City for training.

Less funding at the state level will further shift the cost to local agencies.

"It's putting more burden on local law enforcement to carry that load," Barthel said.

Legislators said Friday that a committee ought to be established to study ways to deal with the funding problem, and Barthel hopes they can find an answer.

Officers must be trained and ready for situations outside their day-to-day experiences, Barthel said.

"You could go your entire 30-year career and never have to fire your gun, but we still need them to be proficient," Barthel said.



Marty Jackley



Doug Barthel