

# South Dakota Supreme Court Opinions 2016 Report



## Study Assignment

Under SDCL 2-9-1.1 the Legislative Research Council is required to prepare an annual report of the opinions of the South Dakota Supreme Court in cases that interpret state statute and the intent of the Legislature. If the court interprets the statute contrary to what was intended by the Legislature, the Legislative Research Council may make recommendations for corrective action. Under SDCL 2-9-4 (8) the Executive Board shall review these cases and make recommendations for further action based on those state court opinions.

## Summary of Cases

### **In Re: Petition for Declaratory Ruling Re: SDCL 62-1-1(6)**

The South Dakota Supreme Court found issue with the language of SDCL 1-26-30. A 1977 amendment changing the word "and" to the word "or" created a disconnect of who could appeal an agency decision to a circuit court. The "or" allows non-aggrieved parties to appeal an agency decision to a circuit court. The Court also points to a disconnect with its own jurisdiction,

"[w]e acknowledge what appears to be an inconsistency: declaratory rulings in hypothetical cases will be appealable to the circuit court but not this Court. This is an anomaly created by the Legislature's 1977 amendment of the APA (SDCL 1-26-30) allowing non-aggrieved parties to appeal to circuit court but not this Court. Although we question whether the Legislature intended this unusual result, the statutes are clear and therefore resolution of that question is within the exclusive province of the Legislature."

In order to remedy this issue, an amendment to SDCL 1-26-30 would be required changing the "or" back to "and". This would make SDCL 1-26-30 consistent with SDCL 1-26-37 and allow only aggrieved parties to appeal agency decisions.

### **Matter of Adoption of A.A.B & B.A.B**

The Court questioned whether or not it was the intention of the Legislature to require the Department of Social Services (DSS) to consent to adoption of children in its custody under SDCL 25-6-11 and SDCL 25-6-12. The language uses a permissive "may" rather than a mandatory "shall". The Court also found that ARSD 67:14:32:17 went beyond statutory authority by requiring potential adopters to get prior approval of DSS before filing a petition for adoption. The Court found that to be taking authority away from the circuit court.

If the Legislature intends for DSS approval of adoption of children in DSS custody, then there would need to be statutory change to chapter 25-6.

### **Pitt-Hart v. Sanford USD Med. Ctr.**

The Court concluded that SDCL 15-2-14.1 created a statute of repose and not a statute of limitations for a medical malpractice action. The section reads, in part,

"an action against a physician, surgeon, dentist, hospital, sanitarium, registered nurse, licensed practical nurse, chiropractor, or other practitioner of the healing arts for malpractice, error, mistake, or failure to cure, whether based upon contract or tort, can be commenced only within two years after the alleged malpractice, error, mistake, or failure to cure "

The statute limits a cause of action to two years after the wrongdoing and not the discovery of an injury that is actionable.

No action would be necessary if the intent of the Legislature is to have a statute of repose. If the Legislature intends a statute of limitation, the language would need to be changed to indicate that the two years begins to run from, "the time a cause of action is known to exist" or something to that effect.

#### **State v. Smith and State v. Johnson**

These two cases deal with law enforcement officer's personnel records and whether or not they are discoverable in criminal and civil cases. The Court points out that, "South Dakota lacks detailed legislation specific to the production of law enforcement personnel records." Law enforcement personnel records are treated like other personnel records which are statutorily protected but that protection is not absolute. The Court points out that New York and California have "detailed bodies of legislation" regarding this issue. The Court did establish a three-part test to determine if personnel records should be produced.

No change would be required, unless it is the intent to treat law enforcement personnel records differently than general personnel records.

#### **State v. Lerma**

The issue in this case dealt with whether or not it was the intent of the Legislature that all the brake lights on a vehicle are in working order or if only two working brake lights are required, according to SDCL 32-17-8.1. The pertinent language of the statute currently reads,

"Except for vehicles equipped with slow-moving vehicle emblems in compliance with §§ 32-15-20 and 32-15-21 every motor vehicle, trailer, semitrailer, and pole trailer shall be equipped with **two or more** stop lamps."

The statute goes on to then list the requirements of a brake light. The statute was described as confusing by the Court. The Court determined that the language "two or more" establishes a required minimum of two working brake lights but authorizes more. As long as a vehicle has two working brake lights, even if there is a nonworking brake light, there is no violation of the law and no reasonable suspicion for an officer to stop the vehicle. If the intent of the Legislature is to have all equipped brake lights in working order, a solution would be to specify that *each* brake light meet the established requirements.

#### **State v. Horned Eagle**

In this case the issue was whether or not SDCL 23A-13-10(4) required prosecuting attorneys to turn over their written notes on, "[a] summary of an oral declaration made by someone other than the witness that has been reduced to writing," in discovery. The Court found that a prosecutor's notes summarizing the victim's statement was discoverable under SDCL 23A-13-10(4) and not protected by attorney work product established in SDCL 23A-13-5.

The Court compared South Dakota's law against the federal rules and found that the federal rules do not include the language that was at issue in this case. The Court found the language of SDCL 23A-13-10(4) to be unambiguous and the prosecution was required to turn over its notes on the victim's statements for an in camera review.

If the Legislature does not intend for the notes and summaries of SDCL 23A-13-10(4) to be turned over by prosecutors then the subdivision could be removed, to more closely follow the federal rules. Another option would be to remove SDCL 23A-13-10 from the list of discoverable exceptions in SDCL 23A-13-5.

### **Recommendations**

None.

In the above cases the South Dakota Supreme Court suggests Legislative action to resolve an issue of legislative intent. However, it is the opinion of the Legislative Research Council that there is enough attention from various interested parties, who have more incentive, to propose legislation on their own. Meaning the Executive Board would not need to suggest legislation at this time.