MINERAL SEVERANCE FUNDING HISTORY

1978 – Legislation was introduced and passed to create a tax (4.5%) on the production of minerals. The legislation required that 2/3 would be returned to the county of production and that the State would retain 1/3. The County allocation could be used for: "at the direction of the board of county commissioners, allocate the funds for school, roads, law enforcement and municipal purposes to offset social, economic or physical impacts, either direct or indirect, resulting from the extraction of severed energy minerals in the county." The new law also stated that no county shall receive more than $300,000 in a calendar year.

1979 – The 1978 legislation was amended to remove what the funds could be used for and narrowed it down to Roads and Schools, still at the direction of the board of county commissioners and also changed the state distribution to 50%/50%

1981 – First payments were received by the county. The county retained 100% of the funds received.

1985 (April) The County granted $150,000 to be placed in a school building fund which amounted to 7.95% of the funding being received at that time. This was for the construction of the "music" room on the northwest corner of the school

1986 (January) School district requested 35% of the Mineral Severance Funds

1986 (March) School amends the request for Severance funds

1986 (April) County grants the school 8.17% of the Mineral Severance funds plus continued PILT funding (PILT funding to the School was ½ of moneys received by County)

1991 (April) School requests 20% Mineral Severance Funds and no PILT funding -or- 15% Mineral Severance Funds plus 50% PILT funds

1991 (May) County grants 20% of the Mineral Severance Funds and no PILT funding

1999 (July) Legislature starts looking at school funding and the outside funds they receive other than property taxes. Mineral Severance funds were tagged as an outside funding source and consideration was given to whether state aid should be reduced due to outside funding sources. At this time the County made the decision to stop "budgeting" to give Mineral Severance funds to the school. This was done under the premise that if the State would decide to reduce state aid that the County could easily stop the funding because the allocation had not been budgeted and the state could not come back on the County to remit the budgeted funding. Mineral Severance funding is now approved by the Board each time the funds are received by the County.

2006 Memo was received regarding the placement of Mineral Severance funds into various school funds and also regarding the impact on State Aid

2008 Legal Opinion received regarding placement of funds to the school

2015 County caps Mineral Severance Funds that are remitted to the School at $600,000 per year.

10-39A-6. Every person who fails to file with the department the statements required by this chapter during the time and in the manner required by this chapter is liable for a penalty of not less than one hundred dollars nor more than five thousand dollars, and, if any operator shall so fail to file such statements, then the secretary may ascertain and certify the taxable value of the energy minerals subject to taxation under this chapter from all the data and information obtainable.

Section 11. That chapter 10-39A be amended by adding thereto a new section to read as follows:

All taxes, interest, and penalties imposed and collected by the secretary under this chapter shall be distributed as follows:

(1) Two-thirds shall be returned to the county in which the energy minerals were extracted or mineral products were severed;

(2) One-third shall be paid into the state treasury and credited to the general fund.

Section 12. That chapter 10-39A be amended by adding a new section to read as follows:

All taxes, interest, and penalties imposed and collected by the secretary under this chapter shall be distributed as follows:

(1) One-half shall be returned to the county in which the energy minerals or mineral products were severed;

(2) One-half shall be paid into the state treasury and credited to the general fund. No county shall receive more than three hundred thousand dollars in a calendar year. Any excess over three hundred thousand shall be credited to the state general fund.

Section 13. All funds remitted to counties under this Act shall be paid out on warrants drawn by the state auditor on vouchers approved by the secretary of the department of revenue, or his designee.

Section 14. Upon receipt of any funds remitted to a county under the provisions of this Act, the county treasurer shall deposit the funds in a trust and agency account. The county treasurer shall, at the direction of the board of county commissioners, allocate the funds for school, roads, law enforcement and municipal purposes to offset social, economic or physical impacts, either direct or indirect, resulting from the extraction of severed energy minerals in the county.

Section 15. Whereas, this Act is necessary for the support of the state government and its existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval, except for section 12, which shall be effective January 1, 1980. Section 11 shall be in effect until December 31, 1979

Certified March 8, 1978

1979 SOUTH DAKOTA SESSION LAWS
CHAPTER 77
(S.B. 64)
ENERGY DEVELOPMENT IMPACT FUND CREATED

AN ACT ENTITLED, An Act to create an energy development impact fund and to remove the limit on the amount of energy mineral severance tax returned to counties.
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:
Section 1. There is hereby created a special fund within the state treasury to be known as the energy development impact fund for the purpose of offsetting economic, social and physical impacts resulting from energy development and production. All money in the fund shall be budgeted and expended in accordance with chapters 4-7, 4-8, 4-8A, and 4-8B.
Section 2. Funds paid to counties under this Act shall be paid out on warrants drawn by the state auditor on vouchers approved by the director of the office of energy policy or his designee.
Section 3. Upon receipt of any funds paid to a county under the provisions of this Act, the county treasurer shall deposit the funds in a trust and agency account. The county auditor shall at the direction of the board of county commissioners, allocate the funds to be distributed by the county treasurer for school and road purposes to offset social, economic or physical impacts, either direct or indirect, resulting from energy development or production in the county.
Section 4. That section 11 of chapter 81 of the 1978 Session Laws be amended to read as follows: § 11. That chapter 10-39A be amended by adding thereto a new section to read as follows: All taxes, interest, and penalties imposed and collected by the secretary under this chapter shall be distributed as follows:
(1) Two-thirds shall be returned to the county in which the energy minerals were extracted or mineral products were severed;
(2) One-third shall be paid into the state treasury and credited to the energy development impact fund.
Section 5. That section 12 of chapter 81 of the 1978 Session Laws be amended to read as follows: § 12. That chapter 10-39A be amended by adding a new section to read as follows:
All taxes, interest, and penalties imposed and collected by the secretary under this chapter shall be distributed as follows:
(1) One-half shall be returned to the county in which the energy minerals or mineral products were severed;
(2) One-half shall be paid into the state treasury and credited to the energy development impact fund.
Section 6. The dollar balance in the energy impact fund shall not exceed one million dollars. Any excess over one million dollars shall be credited to the state general fund.
Section 7. The state investment officer is responsible for the investment of the energy impact funds.
Section 8. The energy development impact fund shall cease to exist on June 30, 1984, and any moneys then remaining in such fund shall be placed in the general fund.
Approved March 30, 1979

10-39A-1. Severance tax imposed on energy minerals--Rate.

For the privilege of severing energy minerals in this state, there is imposed on the owner or operator of any energy mineral an excise tax, to be termed a "severance tax," equal to four and one-half percent of the taxable value of any energy minerals severed and saved by or for the owner or operator.

Source: SL 1977, ch 93, § 1; SL 1978, ch 81, § 1; SL 1979, ch 78, § 1; SL 2008, ch 37, § 94.

10-39A-1.1. Definition of terms.

Terms used in this chapter mean:

(1) "Energy minerals," any mineral fuel including coal, lignite, petroleum, oil, natural gas, uranium, and thorium and any combination of minerals used in the production of energy;

(2) "Market value," the price at which the property would change hands between a willing buyer and willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the facts;

(3) "Operator," a person who directly or physically severs minerals from the land;

(4) "Owner of interest" or "owner," an owner of a landowner's royalty, of an overriding royalty, or of profits and working interests, or any combination thereof. The term does not include an owner of federal, state, or local governmental royalty interest;

(5) "Sale price," the total consideration received in exchange for energy minerals;

(6) "Secretary," the secretary of the South Dakota Department of Revenue;

(7) "Severing," the mining, extracting, or producing of any energy minerals in South Dakota;

(8) "Severor," a person engaging in the business of severing energy minerals that the person owns or a person who is the owner of energy minerals and has another person performing the severing of such energy minerals, except that the term does not include the State of South Dakota or its political subdivisions

Source: SL 1978, ch 81, § 2; SL 1979, ch 78, § 2; SL 2003, ch 272 (Ex. Ord. 03-1), § 82; SL 2008, ch 37, § 95; SL 2011, ch 1 (Ex. Ord. 11-1), § 161, eff. Apr. 12, 2011.

10-39A-8. Proceeds distributed.

All taxes, interest and penalties imposed and collected by the secretary under this chapter shall be distributed as follows:

(1) One-half shall be returned to the county in which the energy minerals or mineral products were severed; and

(2) One-half share shall be paid into the state treasury and credited to the general fund.

Source: SL 1978, ch 81, §§ 11, 12; SL 1979, ch 77, §§ 4, 5; SL 1981, ch 96; SL 2003, ch 272 (Ex. Ord. 03-1), § 82; SL 2007, ch 28, § 1; SL 2011, ch 1 (Ex. Ord. 11-1), § 161, eff. Apr. 12, 2011; SL 2021, ch 49, § 3.

10-39A-10. County trust and agency account--Purposes for which proceeds used by counties.

Upon receipt of any funds paid to a county under the provisions of this chapter, the county treasurer shall deposit the funds in a trust and agency account. The county auditor shall at the direction of the board of county commissioners, allocate the funds to be distributed by the county treasurer for school and road purposes to offset social, economic, or physical impacts, either direct or indirect, resulting from energy development or production in the county.

Source: SL 1978, ch 81, § 14; SL 1979, ch 77, § 3.

MINERAL SEVERANCE FUNDING DISTRIBUTION HISTORY

YEAR	RECEIVED FROM STATE	PAID TO SCHOOL	PAID TO TOWNS	RETAINED BY COUNTY
1981	$ 669,966.28			$ 669,966.28
1982	$ 730,490.80			$ 730,490.80
1983	$ 666,439.71			$ 666,439.71
1984	$ 690,296.80			$ 690,296.80
1985	$ 558,995.70	$ 150,000.00		$ 408,995.70
1986	$ 682,825.99			$ 682,825.99
1987	$ 462,934.78	$ 25,707.08		$ 437,227.70
1988	$ 449,027.46	$ 36,685.54		$ 412,341.92
1989	$ 488,462.80	$ 39,907.41		$ 448,555.39
1990	$ 594,278.10	$ 48,552.54		$ 545,725.56
1991	$ 695,724.71	$ 56,840.71 8.17		$ 638,884.00
1992	$ 577,097.32	$ 115,419.45 20%		$ 461,677.87
1993	$ 508,239.15	$ 141,647.82		$ 366,591.33
1994	$ 415,177.86	$ 83,035.57		$ 332,142.29
1995	$ 443,069.10	$ 88,576.39		$ 354,492.71
1996	$ 474,822.53	$ 89,436.43		$ 385,386.10
1997	$ 516,723.12	$ 103,344.62		$ 413,378.50
1998	$ 381,715.07	$ 61,472.82		$ 320,242.25
1999	$ 334,113.15	$ 59,484.61		$ 274,628.54
2000	$ 671,420.58	$ 116,698.57		$ 554,722.01
2001	$ 747,666.98	$ 154,526.39		$ 593,140.59
2002	$ 569,873.91	$ 114,213.93		$ 455,659.98
2003	$ 754,457.37	$ 147,259.47		$ 607,197.90
2004	$ 1,006,196.55	$ 177,811.41		$ 828,385.14
2005	$ 1,455,846.38	$ 352,790.81		$ 1,103,055.57
2006	$ 1,647,591.35	$ 329,518.26		$ 1,318,073.09
2007	$ 1,163,223.86	$ 232,644.77		$ 930,579.09
2008	$ 3,418,432.81	$ 683,686.57		$ 2,734,746.24
2009	$ 1,788,200.41	$ 357,640.09		$ 1,430,560.32
2010	$ 3,248,131.89	$ 649,626.38		$ 2,598,505.51
2011	$ 2,233,581.42	$ 446,716.28		$ 1,786,865.14
2012	$ 3,206,994.33	$ 641,398.86		$ 2,565,595.47
2013	$ 3,173,924.09	$ 634,784.82		$ 2,539,139.27
2014	$ 4,336,450.35	$ 867,290.08	$ 50,000.00	$ 3,419,160.27
2015	$ 1,664,916.65	$ 332,983.32		$ 1,331,933.33
2016	$ 770,948.42	$ 154,189.69		$ 626,886.05
2017	$ 1,667,705.25	$ 333,541.05		$ 1,334,164.20
2018	$ 1,177,014.96	$ 235,402.99		$ 941,611.97
2019	$ 1,578,840.48	$ 315,768.09		$ 1,263,072.39
2020	$ 978,363.24	$ 196,672.65		$ 781,690.59
2021	$ 1,127,471.36	$ 225,494.27		$ 901,977.09
2022	$ 1,828,946.85	$ 365,789.37		$ 1,463,157.48
2023	$ 1,393,103.44	$ 278,620.68		$ 1,114,482.76
2024	$ 1,324,167.54	$ 264,833.51		$ 1,059,334.03

April 2, 1985

Motion by Niemi, seconded by Parfrey and carried unanimously to appropriate $150,000.00 from the severance fund to the school building fund according to the following formula: (school levy request) $548,871.26 divided by (total pupils) 330 = $1,663.25 multiplied by (transient impact pupils) 33 = $54,887.25 divided by (1984 severance received) $690,296.80 = 7.95% multiplied by severance = $54,878.60. Money to be kept in a County Trust fund until such time as school has accumulated Capitol Outlay to match funds in the Trust. Money will be appropriated each year at 7.95% of the severance income of 1984, 1985 and 1986 up to $150,000.00.

Parfrey made the motion authorizing the Auditor to transfer $54,878.60 of the 1984 severance collection to School Building Impact Trust Fund. Oleson seconded the motion. Motion carried unanimously.

NOTARY SEAL

The Board authorized Lawrence Patterson, Hwy. Supt. to get a notary seal.

BRIDGES

The Board discussed Redig road bridge on the North Moreau next to Govert School, discussed installing I-Beam bracing on bridges on Lewton road and Norbeck road. The bridge on Ludlow road needs broken stringers repaired.

The Board recessed until April 3, 1985.

April 3, 1985

The Board reconvened in session on April 3, 1985. Members present were Wagner, Laflin and Parfrey. Niemi and Oleson were absent.

HEARING ON ROAD PETITION

The hearing on road petition was held at 1:30 P.M. as advertised. Those in attendance were Jack Buckmier, Glen Seifert, Michael Seifert and Richard Smith. Also in attendance was Linda Stephens.

The road was discussed. No action was taken at this time as two Board members were absent.

ADJOURNMENT

Motion by Parfrey, seconded by Laflin and carried to adjourn.

Signed: Donald Wagner, Chairman

ATTEST: Carol K. Baier
Harding County Auditor

Severance to H.C. School Bldg. —
1986 paymts.

			Paymts. —	
		12-85	18,069·50	+
		1-86	17,876·50	+
4th qtr-1985	187,972.80	2-86	9,069·00	+
1st qtr-1986	135,161.13	4-86	17,646·50	+
2nd qtr-1986	82,086.00	5-86	30,310·50	+
3rd qtr-1986	86,891.93	7-86	21,508·54	+
			114,480·54	◇
	$492,111.86	12-86	35,519·46	+
			150,000·00	*

X 7.95%

$39,122.90

35,519.46 — Amount to transfer to equal $150,000.

$3,603.44 Balance.-

~~Transfer fund Severance~~ $35,519.46 Less Int in impact fund of 984.40 = 34,535.06

Transfer from Mineral Severance to School Bldg. Impact Trust fund $34,535.06, to make the $150,000. allocated to school bldg. from Severance fund.

Starting in April-1987 the allocation of $61,226.55 to school from quarterly paymts of Severance fund at 8.17% -

First year allocation of $61,226.55 will be less the balance to the school Bldg. -

61,226.55
Less 35,519.46
$25,707.09 — Bal. due in 1987 to school from ~~...~~ Mineral Severance. —
Paymt. 7603.39
$18,103.70
Paymt. 9285.37
$8818.33 due.
Paid 8818.33
— 0 —

Fed. Payment in Lieu — $36,735.93

PETER C. LARSON, President
ALBERT PENN, Vice President
GARY SCHMALTZ

PEGGY D. BROWN
JOHN HUMBRACHT

BRENDA K. VEAL, Business Manager

HARDING COUNTY SCHOOL DISTRICT NO. 31-1

JAMES L. DOOLITTLE, Superintendent of Schools
BOX 367
BUFFALO, SOUTH DAKOTA 57720

January 7, 1986

Mr. Don Wagner, Chairman
Harding County Commission
P.O. Box 26
Buffalo, SD 57720

Dear Don:

The South Dakota Department of Education is near completion of an Energy Impact Study Related to the Harding County School System. The preliminary results confirm the conclusions of the earlier study conducted by Black Hills Council of Local Governments that there is a significant impact on the Harding County School system attributable to energy development.

Due to the extensive impact on the school system directly or indirectly resulting from energy development or production within Harding County, the School Board is formally requesting that the Board of County Commissioners allocate a percentage of the energy development impact funds to Harding County School District in a quarterly basis to offset social, economic or physical impacts in the school system.

The percentage requested for allocation to the school district is 35% of the quarterly total of the energy development impact funds received by Harding County.

Thanks for your consideration of this request. Please notify us if you have questions or desire further clarifications or amendments to the request.

Respectfully submitted,

Peter C. Larson

Peter C. Larson, President
Harding County School District #31-1

James L. Doolittle

James L. Doolittle, Superintendent

cc: Gail Parfrey, Harding County Commissioner
Oliver Oleson, Harding County Commissioner
John H.Niemi, Harding County Commissioner
Charles Laflin, Harding County Commissioner
Harding County School Board Members

PRELIMINARY

ENERGY IMPACT TO THE HARDING COUNTY SCHOOL SYSTEM

The purpose of this report is to examine the relationship between historical and projected school enrollments in the Harding County School District and the number of students who are supported by workers involved in direct energy production and energy-related service activities in Harding County.

Harding County School officials have provided the following historical and projected enrollment statistics for the District:

SCHOOL YEAR	TOTAL ENROLLMENT	SCHOOL YEAR	TOTAL ENROLLMENT
1974-75	204	Projections:	
1975-76	203	1985-86	250
1976-77	220	1986-87	254
1977-78	200	1987-88	256
1978-79	187	1988-89	261
1979-80	177		
1980-81	164		
1981-82	172		
1982-83	190		
1983-84	208		
1984-85	233		

These figures and the accompanying graph show that the six year period 1974-75 to 1980-81 was one in which the trend in total enrollment was clearly heading downward, in concert with many of the more sparsely populated rural counties in South Dakota. However, an abrupt turnaround has occurred since the 1980-81 school year, with increases recorded each year since that period and a projected enrollment of 261 for the 1988-89 school year.

This projection is based upon children currently in the system and pre-schoolers residing in the county, and considers neither new migration into Harding County or possible losses from current residents moving elsewhere. The 97 student increase expected from the 1980-81 total of 164 to a projected figure of 261 for 1988-89 represents an increase of nearly 60 percent in an eight year period, and appears to closely parallel increased energy exploration and production activities in Harding County.

PRELIMINARY

Presented below are annual oil and gas production figures for Harding County from 1970 to 1984.

YEAR	OIL PRODUCTION (Bbl)	GAS PRODUCTION (Mcf)
1970	153,836	9,648
1971	142,618	8,782
1972	213,339	8,300
1973	272,289	17,640
1974	479,904	47,870
1975	458,700	38,611
1976	433,182	51,635
1977	616,897	68,926
1978	861,511	74,706
1979	839,631	905,060
1980	756,366	1,171,237
1981	852,270	1,208,031
1982	854,961	2,058,552
1983	930,319	1,826,123
1984	422,970*	795,689*

*January through May

These production figures reveal that 1) sustained increases in oil production have occurred from 1978 to the present and 2) large volume gas production first occurred in 1979 and has shown an upward trend since that time.

While there is a strong association between energy production and school enrollment in Harding County since the end of 1979, one must examine the nature and extent of the relationship between those involved in energy production related activities and increased student numbers before any inferences of cause and effect can be made. Toward this end, the school district calculated the number of students whose parents were involved in energy-related employment for the actual 1974-75, 1979-80 and 1984-85 school years, as well as the projected year of 1988-89. Presented below are the results of this effort by the school administration.

SCHOOL YEAR	TOTAL ENROLLMENT	STUDENTS RELATED TO ENERGY EMPLOYEES	ENERGY RELATED AS PERCENT OF TOTAL
1974-75	204	6	2.94%
1979-80	177	16	9.04%
1984-85	233	66	28.33%
1988-89	261	77	29.50%

From the relatively insignificant figure of 2.94 percent recorded in 1974, the percentage of students whose parents are employed in energy-related activities in Harding County rose to 28.33 percent in February of 1985 and is expected to reach nearly 30 percent during the 198889 school year.

These figures, while showing a significant impact on the school system by children of people who are employed in energy-related activiities, fail to address whether significant numbers of these students would have been enrolled even if there were no energy development in the county. At the extremes, two possibilities exist: 1) all of the energy-related students are the result of in-migration to the county and definitely would not be present without energy development; and 2) all of the people working in energy jobs were county residents prior to energy development and therefore their children would have been - students in the system even in the absence of energy development.

As expected, the actual case lies somewhere between these two extremes. Records reveal that there were 81 people employed by energy production and service companies in Harding County during 1984. These 81 people support the 66 students previously mentioned as representing 28.33 percent of total enrollment during the 1984-85 school year. Of the 81 employees recorded, 40 are new residents to the area and, therefore, represent people who are new impactors on the local economy and its infrastructure. Further, these 40 workers account for 27 of the 66 energy-related students previously reported, which is 40.9 percent of the total group.

What about the other 41 employees that currently work in energy-related activities and are not new residents of the county? Can we simply assume that they and their 39 children/students would have been in Harding County regardless of energy development? Some have reported that they would have left this area if energy development had not occurred, thus they represent an indirect impact from energy activity. Others most likely would have stayed anyway.

Unfortunately, there is no simple or direct answer to this dilemma. However, it does appear reasonable to suggest that if, prior to energy development, the economy of the county was relatively robust and employment levels were stable or expanding, people would not have been as likely to move from the area to seek employment elsewhere in the absence of energy development. Presented below are employment figures for Harding County for 1971-1982, including agricultural and non-ag, as well as total employment.

EMPLOYMENT - HARDING COUNTY

YEAR	1971	1972	1973	1974	1975	1976	1977	1978	1979	1980	1981	1982
TOTAL	914	893	918	1007	999	942	977	1000	955	968	983	956
AG.	477	469	479	580	567	533	509	497	500	459	455	445
NON-AG	437	424	439	427	432	409	468	503	455	509	528	511

Agricultural employment is the more volatile of the two categories shown, often depending on moisture conditions in the area. For the non-ag sector, the level of employment appeared to be drifting downward from the 1971 to 1976 period, with an upward trend and significant gains shown from 1976 to 1982. Although employment totals are not available for 1983 and 1984, recall that the previously reported survey showed 80 people working in energy-related jobs in 1984 compared to six in 1974. Thus, it is apparent that the bulk of increased employment in the non-agricultural sector in Harding County is closely tied to energy activities.

SUMMARY

The turnaround in total enrollment experienced by the Harding County School District since 1981 appears to be strongly related to the expanding energy production and support services occurring in the area. Nearly one-half (40 of 81) of all energy-related employees represent new residents to the area, and these 40 people account for 41 percent of the students who are the responsibility of those working in energy-related jobs. Slightly more than half of those employed in energy-related work are previous residents of the area, and historical employment data indicate the possibility that some of these workers might have relocated to seek employment elsewhere if new energy-related jobs would not have become available in Harding County. While school district figures show that nearly 30 percent of current and projected students are dependents of people who work in energy-related employment, we know that, at a minimum, 12 percent (nearly on-in-eight) are the result of people who moved to the area because of energy development. The actual impact attributable to energy development - both direct and indirect - thus lies between the lower figure of 12 percent and the upper figure of nearly 30 percent.

School –

Total State aid rec'd last 8 yrs – $555,291.10

Total State Appportion rec'd last 8 yrs – (Dept of Sch & Public lands)	$	163,583.17
State Payment in Lieu of Tax – 1 yr –	$	76,981.12
State aid – exceptional children – Last 6 years	$	94,932.85
Other State Revenue (2 yrs) –	$	4,006.14
Total State Revenue –	$	894,794.38
Personal Property Replacement Tax – 6 yrs –	$	758,555.27

Federal Revenue

National Minerals	Last 8 yrs –	$	836,803.14
Taylor Grazing	– Last 8 yrs –	$	60,318.82
National Forest Land –	Last 8 yrs. –	$	24,408.62
Chapter I	" –	$	76,662.87
Chapter II –	" –	$	26,462.57
Title IV B –	" –	$	8,540.21
Title I –	" –	$	153,200.32
Title II –	" –	$	242.13
Title VI –	" –	$	9,080.00
Title III –	" –	$	120.49
Other Federal Revenue	"	$	7,967.93
Other ESEA	" –	$	1,944.34
		$	1,205,751.44

Federal Payment in Lieu of Tax Last 5 years – $ 208,771.74

Tax Levy Request last 8 years – $ 4,659,374.44

Mineral Severance Money Received.

1984 —	$690,296.80
1983 —	$666,439.71
1982 —	$730,490.80
1981 —	$669,966.28
1980 —	$434,620.12
1979 —	$451,032.22
1978 —	$117,116.77

Using preliminary figures + percentages from Energy Impact & the H.C. School Systems as examined by Von Lindquist, B.H. Council.

1984-85 Total enrollment Buffalo School - 233
energy impacted students - 66
County wide - 288

Total cost per student as per money levied General fund, Cap. Out. & Spec. Ed.

548,871.26 ÷ 288 = $1905.81
Buffalo School × 233

444,053.73
× 28.33%

125,800.43
(half of families new to area due to oil industry) ÷ 2

$62,900.22

1905.81
× 66

125,783.46
÷ 2

$62,891.73

Severance Rec'd - March 1985 188,590.09
Sch. nonag levy (1984)

78,473.73 Gen.
24,909.08 Cap. Out.
1,670.73 Spec. Ed.

105,053.54
Impact % × 28.33%

29,761.67
Level Impact families ÷ 2

$14,880.84

14,880.84
× 4

$59,523.36 for yr. if severance stayed approx same figures

PETER C. LARSON, President
ALBERT PENN, Vice President
GARY SCHMALTZ

PEGGY D. BROWN
JOHN HUMBRACHT

BRENDA K. VEAL, Business Manager

HARDING COUNTY SCHOOL DISTRICT NO. 31-1

JAMES L. DOOLITTLE, Superintendent of Schools
BOX 367
BUFFALO, SOUTH DAKOTA 57720

March 24, 1986

Mr. Don Wagner, Chairman
Harding County Commission
P.O. Box 26
Buffalo, SD 57720

Dear Don:

Due to the extensive impact on the school system directly or indirectly resulting from energy development or production within Harding County, the School Board is formally requesting that the Board of County Commissioners allocate energy development impact funds to Harding County School District on an annual basis to offset social, economic or physical impacts in the school system.

Since our joint meeting with the Harding County Commission on January 29, 1986 and your board's rejection of the first formal request for energy development impact funds by the Harding County School District dated Janaury 7, 1986, the following is an amended request:

The Harding County Impact Study dated January 24, 1986, which was conducted by the Department of Education and Cultural Affairs, indicated a total of 56 impacted students currently attending elementary and secondary schools in Harding County. (This total includes 34 respondents originally from the county that remained for oil employment plus 22 that moved into the community.) We are proposing that severance funds be allocated according to the following formula: (school levy request) $636,757.26 divided by (total students) 364=$1,749.33 multiplied by (energy impact students) 56=$97,962.48. We are requesting that this amount be allocated in addition to the severance funds for the building addition and be acted on within a month for budget planning purposes.

Thanks for your consideration of this request. Please notify us if you have questions or desire further clarifications or amendments to the request.

Respectfully submitted,

Peter C. Larson

Peter C. Larson, President
Harding County School District #31-1

James L. Doolittle

James L. Doolittle, Superintendent

cc: Gail Parfrey, Oliver Oleson, John H. Niemi, Charles Laflin
Harding County Commissioners
Harding County School Board Members

April 18, 1986

SCHOOL

Motion by Niemi, seconded by Laflin to allocate the $97,962.48 that the Harding County School District 31-1 School Board requested in the following manner:

Allocate Mineral Severance funds to Harding County School District 31-1 on the basis of 35 impact students according to the following formula:

(School Levy Request) $636,757.26 divided by (Total Students) 364 = $1,749.33 multiplied by (Energy Impact Students) 35 = $61,226.55.

When quarterly payments of Mineral Severance money is received by the County, a payment of 8.17% will be made, with annual payment not to exceed a total of $61,226.55.

To allocate Payment in Lieu of Tax money in the amount of $36,735.93, making a total of $97,962.48.

If 8.17% of Mineral Severance Tax, received in the calender year, does not earn $61,226.55, the school is to receive the lesser amount.

Moneys to be allocated starting April 1, 1987. The balance due to the Building Trust Fund will be included in 1987 allocation. The formula is to be set each year in regard to the number of total students and impact students, to be agreed upon by both School Board and County Commissioners in accordance to the fall enrollment of that year. Motion passed unanimously by the Board.

The 8.17% was derived by the division of the $61,226.55 allocation by $749,705.53 (total severance funds received by the County in 1985). A list of the 35 impact students is on file in the Auditor's Office.

JANITOR

The Board gave Sandy Wallman, Janitor, permission to rent a power rake and to hire someone to help power rake the Courthouse lawn.

TAXATION OF SEVERED MINERALS

Darlene Piekkola, Director of Equalization, and Thomas E. Graslie, States Attorney, met with the Board concerning the taxation of Severed Minerals. Piekkola discussed the surface values and severed mineral values of land in Harding County. A letter from Dennis Hanson, Director of the Property Tax Division of the Department of Revenue,

HARDING COUNTY SCHOOLS
P.O. Box 367
Buffalo, South Dakota 57720
605-375-3241

SUPERINTENDENT: Charles A. Maxon SECONDARY PRINCIPAL: D. Scott Muirhead ELEMENTARY PRINCIPAL: Robert E. Migneault

April 23, 1991

TO: Harding County Commissioners
FROM: Harding County School Board
SUBJECT: Mineral Severance Tax In Lieu of Payment

The Harding County School Board requests the Harding County Commissioners to distribute PILT and Mineral Severance tax money in the following manner:

1. Twenty percent of the mineral severance tax and no PILT money,

or

2. Fifteen percent of the mineral severance tax and 50% of the money.

Thank you for your consideration in this matter.

Sincerely,

Charles A. Maxon

Charles A. Maxon
Supt. of Schools

HARDING COUNTY AUDITOR

POST OFFICE BOX 26
BUFFALO, SD 57720-0026
TELEPHONE (605) 375-3313

May 9, 1991

Harding County Ind. School District 31-1
P. O. Box 367
Buffalo, SD 57720

RE: MINERAL SEVERANCE FUNDS

Dear Mr. Maxon:

At the May 7, 1991 meeting of the Harding County Board of Commissioners it was voted on to give the School District 20% of the Mineral Severance Money received from the State and no Payment In Lieu of Tax money.

I have enclosed the portions of the Commissioners minutes that deal with the Mineral Severance money that are to go to the School District.

I trust you will pass this information to the School Board for their knowledge.

If you have any questions, please feel free to contact me.

Sincerely,

Kathy Clanton
Harding County Auditor

HARDING COUNTY

KATHY CLANTON, AUDITOR
PO Box 26, Buffalo, SD 57720

605-375-3313
605-375-3318 Fax
hcaud@rapidnet.com

July 7, 1999

Harding County School District 31-1
ATTN: Charles Maxon, Supt.
PO Box 367
Buffalo, SD 57720

RE: MINERAL SEVERANCE FUNDING

Dear Mr. Maxon:

At the July 6, 1999 meeting of the Board of Harding County Commissioners, a lengthy discussion was held concerning the 20% of the mineral severance monies that the County gives to the school district each quarter.

As you are aware, the SD Legislature is conducting summer studies concerning the funding to school districts. It is our understanding that the mineral severance funds that we share with you have been categorized as "Revenue A" funds, which they are considering adding to the state aid formula for distribution to schools on a per pupil basis.

In light of all of this, the Board of Commissioners voted to discontinue the sharing of the mineral severance funding effective December 31, 1999. You will get the 20% funding for the third and fourth quarters of 1999.

The Commissioners have stated that they would be very willing to revisit the issue of sharing the funding after the summer study has made their recommendations to the Legislature and after the Legislature has completed their 2000 session. The Board felt that it was in the best interest of the taxpayers of Harding County to keep the funding in Harding County rather than to have to share more of this revenue with the state and other ~~school districts.~~ ~~Members of the Board, as well as myself, are~~ planning on attending your ~~budget hearing on July 12th to answer any questions that you~~ or the Board may have concerning the County's action on this matter.

As always, you are welcome to call or stop in to visit if you have questions.

Sincerely,

Kathy Clanton

Kathy Clanton
Harding County Auditor

cc: Harding County School Board Members
Harding County Commission Members

TO: William F. Lynch, Chief Financial Officer

FROM: W. H. Engberg, General Counsel

SUBJECT: Mineral Severance Tax/State Aid

DATE: November 21, 2006

This is a follow up to our discussion involving the transfer of funds collected under the provisions of the mineral severance tax (SDCL 10-39A-10). If the funds are transferred to a school district's general fund, a reduction in state aid may result (SDCL 13-13-73.2). If the funds were transferred to the capital outlay fund, the reduction would be avoided. The school district, however, is not allowed to make a transfer from the general fund to the capital outlay fund (SDCL 13-16-26.2). The question therefore arises whether the county could transfer the mineral severance tax directly to the school capital outlay fund. The Auditor General takes the position that it is not allowed, and cites AG Opinion 83-46 for authority.

The AG Opinion, in essence, states that there is no authority under the statutes cited therein to apportion money to a particular fund of a school district. Thus, the money must be deposited in the school district's general fund. The opinion closes by stating that the money may be transferred from the general fund to specific funds by the school district. The opinion predates the enactment of SDCL 13-16-26.2, which prohibits transfers from the general fund to the capital outlay fund.

Therefore, the situation created is that a school district will be penalized for receiving funds under the mineral severance tax, although the clear purpose of the enactment is to benefit schools and roads to offset the impact of the severance.

This incongruous outcome may be resulting from a misinterpretation of the AG opinion. First, as pointed out, the opinion was written before the enactment of SDCL 13-16-26.2, which prohibits a school district from transferring from the general fund to other funds. But even more important, the opinion cites several statutes that relate to various taxes. The mineral severance tax statute is not cited.

The taxation statutes that are set forth in the opinion deal with basic tax assessment. The mineral severance tax, however, addresses the permanent loss of a resource, specifically minerals. The legislature's intent, shown by the wording of the statute is that the money so derived be used for long term assets, as opposed to cash flow. The relevant phrase is "distributed by the county treasurer <u>for school and road purposes to offset social, economic, or physical impacts, either direct or indirect, resulting from energy development or production in the county</u>." (Emphasis added).

To apply the AG Opinion no. 83-46 to the mineral severance tax law is inapposite. To change it, however, would require a construction of the law by the Court.

This could be accomplished by submitting it under a petition for declaratory judgment. A school district would have to retain an attorney to do this, but in light of the penalty that would otherwise result, it may be money well spent.

Lastly, SDCL 13-13-76 provides for an Excess General Fund Oversight Board within the Department of Education to exempt school districts from the reduction in state aid when it is shown that the general fund balance is the result of special circumstances.

BRADY PLUIMER
LAW FIRM A PROFESSIONAL CORPORATION

ATTORNEYS:
THOMAS E. BRADY
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KAREN PAIGE HUNT
DYLAN A. WILDE
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RENAE TYSDAL, PLS
OFFICE MANAGER
JAN BETTEN, CP
LUANNE RUMMEL
WAYNE GILBERT, J.D.

Writer's Direct E-mail – dwilde@blackhillslawyers.com

June 24, 2008

Harding County School Board
PO Box 367
Buffalo, SD 57720

Re: Energy Minerals Severance Tax

Ladies and Gentlemen:

I have been asked to prepare an opinion regarding whether the revenue from the energy mineral severance tax, which is distributed to the Harding County School District from the Harding County Board of Commissioners can be deposited into the school district's capital outlay fund or if it must be deposited into the school district's general fund.

CONCLUSION

After analyzing SDCL Ch. 10-39A, the South Dakota Attorney General's Official Opinion No. 83-46, and the South Dakota Attorney General's Official Opinion No. 80-48, it is my opinion that: 1) SDCL §10-39A-10 is distinguishable from the statutes analyzed in the Attorney General's Official Opinion No. 83-46; 2) it is the legislative intent that the revenues from the energy mineral severance tax be utilized by school districts to renovate, improve, and/or construct facilities to offset the social, economic, and physical impacts of energy development and production; and 3) as a result, Harding County and the Harding County School District should be permitted to deposit revenues from the energy minerals severance tax into the school district's capital outlay fund.

FACTUAL OVERVIEW

Since 2006, Harding County has been allocating and distributing a portion of the revenues it receives from the energy minerals severance tax to the Harding County School District's capital outlay fund. The energy minerals severance tax is a tax imposed by the South Dakota Legislature in SDCL Ch. 10-39A. It is an excise tax on the owners and operators of energy minerals for the privilege of severing energy minerals in the state of South Dakota. SDCL §10-39A-1. The tax is equal to 4 ½% of the taxable value of the energy minerals severed and saved by or for the owner or operator. SDCL §10-39A-1.

The energy minerals severance tax is remitted to the Secretary of the Department of Revenue and Regulation on a quarterly basis. SDCL §10-39A-5. The taxes are then distributed one-half to the general fund of the state treasury and one-half to the county in which the energy minerals were severed. SDCL §10-39A-8. The county can then allocate and distribute the revenues from the tax that are distributed to the county "for school and road purposes to offset social, economic, or physical impacts, either direct or indirect, resulting from energy development or production in the county." SDCL §10-39A-10.

Harding County is a county in which energy minerals are severed. One of the major entities involved in energy mineral extraction in Harding County is Continental Recourses. As a result of the extraction performed by Continental Resources, Harding County receives revenues from the energy minerals severance tax. Also, as a result of the energy minerals located in Harding County and, more specifically, the children of the employees that work for Continental Recourses and the other entities that sever energy minerals, there has been wear and tear on the school district's facilities.

The Harding County School Board has recognized the wear and tear on its existing facilities and has conducted studies to determine the proper course to address such wear and tear, *i.e.*, renovate or improve existing facilities, construct new facilities, etc. In order to pay for the costs associated with the renovation, improvement, and/or construction of its facilities, the Harding County School Board has requested the Harding County Board of Commissioners to allocate and distribute the revenues that the county receives from the energy minerals severance tax to the school district's capital outlay fund.

The school district initially requested that the county allocate and distribute the revenues to the capital outlay fund in July 2006. Thereafter, on December 8, 2006, the school board held a special meeting. Bill Lynch from the Associated School Boards attended the special meeting and discussed various options regarding a five-year plan for the school district's capital outlay fund. Mr. Lynch also discussed a letter dated November 21, 2006, from W.H. Engberg, General Counsel, regarding the energy mineral severance tax and state aid.

After Mr. Lynch's presentation, the Harding County School Board held a regular meeting on December 11, 2006. At the regular meeting, the board once again voted to request that the county allocate and distribute revenues from the energy minerals severance tax into the school district's capital outlay fund. As a result, during fiscal year 2007, approximately $250,000 of revenues from the energy minerals severance tax was deposited into the school district's capital outlay fund. In addition, during the 2008 fiscal year, approximately $400,000 of revenues from the energy minerals severance tax was deposited into the capital outlay fund.

During a recent audit of the Harding County School District's books and accounts, the auditor inquired whether the proceeds from the energy minerals severance tax could be deposited into the capital outlay fund. The auditor, after raising the question with

Legislative Audit and after contacting Jeffrey Hallem with the South Dakota Attorney General's Office, informed the school district that he was uncertain how the revenues from the energy minerals severance tax should be deposited. The auditor's major concern was the South Dakota Attorney General's Official Opinion No. 83-46, entitled Apportionment of Revenue, which opined that revenues from numerous specified taxes and other sources that are distributed by the county to a school district must be deposited into the school district's general fund.

ANALYSIS AND DISCUSSION

This issue requires the construction and interpretation of SDCL Ch. 10-39A and, specifically, SDCL §10-39A-10. SDCL §10-39A-10, provides, in full:

> Upon receipt of any funds paid to a county under the provisions of this chapter, the county treasurer shall deposit the funds in a trust and agency account. The county auditor shall at the direction of the board of county commissioners, allocate the funds to be distributed by the county treasurer for school and road purposes to offset social, economic, or physical impacts, either direct or indirect, resulting from energy development or production in the county.

The statute does not specifically state whether the revenues from the energy minerals severance tax can be deposited into a school district's capital outlay fund or whether the revenues must be deposited into the school district's general fund. However, the question of whether revenues from various taxes and other sources that are collected by counties on behalf of school districts must be deposited into the school districts' general funds was addressed in the South Dakota Attorney General's Official Opinion No. 83-46, Apportionment of Revenue. In that opinion, the Department of Legislative Audit informed the Attorney General that inconsistent procedures were being utilized in the allocation and distribution of such revenues resulting in some counties distributing the revenues over various school district fund accounts, such as the general fund, the capital outlay fund, the redemption fund, and the special education fund, while other counties were depositing the revenues solely into the school districts' general funds.

Pursuant to the Department of Legislative Audit's request, the Attorney General's Office examined nine different revenue sources. The revenue sources examined by the Attorney General included the following:

1) The Bank Franchise Tax pursuant to SDCL §10-43-77;[1]
2) The Rural Electric Company Tax pursuant to SDCL §10-36-10;[2]

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[1] At the time of the Attorney General's Opinion, SDCL §10-43-77 (Bank Franchise Tax) stated:

> The county treasurer upon receipt of such funds shall apportion and distribute the funds between the taxing subdivisions, including the county, in the same proportion as the average of personal property taxes assessed in each taxing subdivision, including the county, for calendar years 1972, 1973, 1974, 1975, and 1976 were distributed as determined and certified by the secretary of revenue.

[2] SDCL §10-36-10 (Rural Electric Company Tax) stated:

3) The Telephone Company Tax pursuant to SDCL §10-33-28;[3]
4) The County Apportionment pursuant to SDCL §13-13-5;[4]
5) State Fines pursuant to SDCL §23A-27-25;[5]
6) The Transient Farmer Tax pursuant to SDCL §10-42-7;[6]
7) The Public Shooting Tax pursuant to SDCL §41-4-8;[7]
8) The National Forest Lands revenue pursuant to SDCL §41-16-15;[8] and
9) The Bankhead-Jones Farm Tenant Act Tax pursuant to §13-14-3.[9]

The county treasurer shall allocate and transmit the taxes from each such company to the school treasurers to each school district in which such company operates on the basis of the gross receipts received by such company from its operations within each such school district within the county.

[3] SDCL §10-33-28 (Telephone Company Tax) stated:

> The county treasurer shall allocate and transmit the taxes imposed by §10-33-21 and collected from each such company to the school treasurers of each school district in which such company operates on the basis of the gross receipts received by such company from its operations within each such school district within the county.

[4] SDCL §13-13-5 (County Apportionment) stated:

> The county treasurer shall on or before the fifth day of January and July to 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.

[5] SDCL §23A-27-25 (State Fines) stated:

> All fines in pecuniary penalties, other than forfeitures provided for in §23A-43-23 and costs as provided in §§23-3-52 and 23A-27-26, for the violation of any state law, when collected, shall be paid into the treasury of the proper county, the net proceeds which shall be applied and used each year for the benefit of the public schools of this state.

In regard to the revenues from state fines, the Attorney General also looked at SDCL §13-13-4, which provides, "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."

[6] At the time of the Attorney General's Opinion, SDCL §10-42-7 (Transient Farmer Tax) stated: "The tax imposed in §10-42-2 shall be paid to the county treasurer and by him apportioned to the school district or districts of the county or counties in which crops are grown and harvested."

[7] SDCL §41-4-8 (Tax Base on Public Shooting Areas) stated:

> Said lands shall be assessed by the directors of equalization within the State of South Dakota in the same manner as other lands are assessed for taxation, and such assessments shall be equalized and said 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 said lands, the taxing officer shall extend only the levies made by the local taxing districts for county, township, and school purposes.

[8] SDCL §41-16-15 (National Forest Lands) stated: "Such part of the funds paid to any county under §41-16-14 and apportioned for the use of the public schools shall be divided among such school districts of the county as include lands which are a part of the forest reserve, in proportion to the area of forest reserve lands in such school district."

[9] SDCL §13-14-3 (Bankhead-Jones Farm Tenant Act) stated:

After listing the revenue sources examined and the applicable statutes, the Attorney General's Opinion merely stated:

> one can see that there is no provision for the apportionment of the money to a particular fund of the school district. Rather, these statutes make clear that the county's only function is to deliver the money to the school district. Therefore, it is my opinion that the answer to your question is that this money should be apportioned by the county to the school district's general fund.

Interestingly, the opinion continued to state that once placed in the general fund, the money could be transferred to a different fund if there was a surplus in the general fund. However, as explained below, since the Attorney General's Opinion was issued, the South Dakota Legislature has enacted legislation prohibiting the transfer of funds from the general fund to the capital outlay fund.

Although SDCL §10-39A-10 is similar to the revenue sources analyzed in the Attorney General's Opinion in that there is no provision for the apportionment of the revenue to a particular fund, the authorization in SDCL §10-39A-10 is distinguishable from the statutes analyzed in the Attorney General's Opinion in two significant ways. First, the statutes analyzed in the Attorney General's Opinion all mandated the distribution of the revenue from the counties to the school districts by using the word "shall." Unlike those statutes, SDCL §10-39A-10 does not mandate the county to distribute the revenue from the energy minerals severance tax to the school district; rather, pursuant to the statute, the county has the discretion to allocate and distribute the revenues for school ***or*** road purposes.

The discretion extended to the counties in SDCL §10-39A-10 is especially significant when considered along with SDCL §13-13-73.2. SDCL §13-13-73.2 provides that "[a] school district's state aid for general education as calculated pursuant to §13-13-73 *shall be reduced by* the amount calculated by subtracting the allowable general fund balance from the general fund balance."[10] (Emphasis added.)

> All funds that shall be received by the several counties of this state, from the secretary of agriculture of the United States, out of the revenues received by the secretary from the use of land acquired by the United States under the provision of "The Bankhead-Jones Farm Tenant Act" shall be apportioned, by the county commissioners of each county, among the several school districts having children requiring school facilities, according to the acreage of such land in said districts, and upon such apportionment, shall be paid to such school districts by the county treasurers, to be used for school purposes in accordance with the provisions of said federal act.

[10] The "allowable general fund balance" is "the fund base percentage multiplied by the district's general fund expenditures in the previous school fiscal year." SDCL §13-13-10.1(10).

The "general fund base percentage" "is the lesser of:
(a) The general fund balance percentage as of June 30, 2000; or
(b) The maximum allowable percentage for that particular fiscal year as stated in this subsection.
For fiscal year 2008, the maximum allowable percentage is one hundred percent; for fiscal year 2009, eighty percent; for fiscal year 2010, sixty percent; for fiscal year 2011, forty percent; for fiscal year 2012

Considering the impact that the general fund balance has on the state aid that a school district receives, and considering the county has discretion in the allocation and distribution of the revenues from the energy minerals severance tax, if the county is required to distribute the revenues into the school district's general fund, the county will exercise its discretion and allocate and distribute the revenues for the improvement of the county roads. By allocating and distributing the revenues from the energy minerals severance tax to road purposes, the county will obtain the full benefit of such revenues and, at the same time, will not experience a reduction in state aid to the school district. However, it is clear from the language of SDCL §10-39A-10 that the South Dakota Legislature intended for the revenues from the energy minerals severance tax to be available for school districts to offset the impact from energy development or production in the county. Therefore, if the revenues from the energy minerals severance tax are required to be deposited into the general fund, the legislative intent will be frustrated as counties will allocate and distribute the revenues to road purposes in order to avoid a reduction in state aid.

The second, and most significant, difference between SDCL §10-39A-10 and the statutes analyzed in the Attorney General Opinion is the restrictions that the statutes place on the eventual use of the revenues. The statutes analyzed in the Attorney General's Opinion do not have any restrictions on the eventual use of the funds. SDCL §10-39A-10, however, restricts the eventual use of the funds to school or road purposes to *"offset social, economic, or physical impacts, either direct or indirect, resulting from energy development or production in the county."* (Emphasis added.) Therefore, while the statutes analyzed in the Attorney General's Opinion make it "clear that the county's only function is to deliver the money to the school district", SDCL 10-39A-10 makes it clear that the county's function is not merely to deliver the funds to the school district, but rather, the county must allocate and distribute the revenues for the specific purpose of offsetting the social, economic, and physical impacts of energy development and production. Thus, because the county has the burden of allocating and distributing the revenues for the specific purpose of offsetting the social, economic, or physical impacts resulting from energy development or production, the county and school district must be able to earmark the revenues in some manner, such as by depositing the funds in a capital outlay fund, to ensure that the revenues are in fact used for the permissible purposes.

Moreover, the restrictions on the eventual use of the revenues from the energy minerals severance tax clearly evidence the legislative intent to permit the county and school

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and subsequent fiscal years, twenty-five percent. However, the general fund base percentage can never be less than twenty-five percent". SDCL §13-13-10.1(9).

The "general fund balance percentage" "is a school district's general fund balance divided by the school district's total general fund expenditures for the previous school fiscal year, the quotient expressed as a percent". SDCL §13-13-10.1(8).

The "general fund balance" is "the unreserved fund balance of the general fund, less general fund exclusions plus, beginning with transfers made in fiscal year 2001, any transfers out of the general fund for the previous school fiscal year". SDCL §13-13-10.1(7).

districts to utilize the revenues for renovating, improving, or constructing school facilities if it will offset the impact of energy development or production. The legislature's intent, however, would be severely hindered if the revenues from the energy minerals severance tax are required to be deposited into the school district's general fund. The legislature's intent would be hindered due to the restrictions that have been placed on the use of funds in the various school district fund accounts.

The use of the funds in the school district's general fund is restricted by SDCL §13-16-3. That statute provides, in full: "The general fund of the school district is a fund provided by law to meet all the operational costs of the school district, *excluding capital outlay fund* and special education fund *expenditures* pursuant to §13-13-37, and to redeem all outstanding warrants against the general fund." SDCL §13-16-3 (emphasis added). The use of funds in the school district's capital outlay fund is also restricted. SDCL §13-16-6 sets forth the expenditures that may be satisfied by the funds in the capital outlay fund as follows:

> The capital outlay fund of the school district is a fund provided by law to meet expenditures which result in the acquisition or lease of or additions to real property, plant or equipment. Such an expenditure shall be for land, existing facilities, improvements of grounds, construction of facilities, addition to facilities, remodeling of facilities, or for the purchase or lease of equipment. . . .

Thus, the funds in the school district's general fund can only be utilized to meet the school district's operational costs and cannot be used to satisfy expenditures that are to be paid from the capital outlay fund. And, as explained in SDCL §13-16-6, the capital outlay fund can be utilized to satisfy expenditures for the renovation, improvement, and construction of the school district's facilities. Therefore, funds in the general fund can not be used to renovate, improve, and/or construct the school district's facilities.

Additionally, SDCL §13-16-26.2 expressly prohibits the school district from transferring any funds, exclusive of federal funds, from the general fund to the capital outlay fund.[11] Thus, not only is the school district prohibited from using the funds in the general fund for capital outlay expenditures, but it is also prohibited from transferring any funds from the general fund to the capital outlay fund. Due to these restrictions, if the revenues from the energy minerals severance tax were required to be deposited into the school district's general fund, the funds would never be able to be utilized for the renovation, improvement, and/or construction of the school district's facilities to offset the social, economic, or physical impacts resulting from energy development and production. Again, such a result would directly conflict with the legislative intent of SDCL §10-39A-10. Thus, the Attorney General's Official Opinion No. 83-46 cannot be applied to SDCL §10-39A-10, and as a result, the county and the school district must be permitted to deposit the revenues from the energy minerals severance tax into the school district's capital outlay fund.

The conclusion that the revenues from the energy minerals severance tax can be utilized to renovate, improve, and/or construct school district facilities is also supported by the

[11] This statute was enacted in 2000 and modified to the present language in 2001.

South Dakota Attorney General's Official Opinion No. 80-48, which is entitled SDCL 10-39A Energy Development Impact Fund. In that opinion, Governor William Janklow requested an opinion from the Attorney General as to whether any unit of government could apply for and receive funds from the Energy Development Impact Fund established in SDCL §10-39A-8.1.[12]

Under the factual scenario presented by Governor Janklow, the City of Hot Springs requested money from the Energy Development Impact Fund for curb and gutter and hard surface asphaltic concrete for a two block area. The Edgemont School District also requested money from the Energy Development Impact Fund for the renovation of buildings, the replacement of an armory, and the addition of geothermal heat to modified buildings. In concluding that any "unit of government within the State of South Dakota could seek an appropriation from the State Energy Development Impact Fund to offset economic, social and physical impacts resulting from energy development and production," the Attorney General distinguished SDCL §10-36A-8.1 from SDCL §10-36A-10. The Attorney General found that the only difference between the two statutes was that pursuant to SDCL §10-36A-8.1 the funds in the Energy Development Impact Fund were for the purpose of "offsetting economic, social and physical impact resulting from energy development and production" while in SDCL §10-36A-10 the purpose of the funds was restricted to *school and road purposes* to offset social, economic, and physical impacts, either direct or indirect, resulting from energy development or production in the county. Thus, the opinion concluded that merely because school districts, townships, or counties could apply to the county for revenues from the energy minerals severance tax, they were not precluded from applying for an appropriation from the Energy Development Impact Fund. The opinion further explained that an appropriation could be sought from the county, or "the State Energy Development Impact Fund, or partial funding could be sought *from both sources to help finance a project designed to offset economic, social and physical impacts resulting from energy development.*" (Emphasis added.)

Although not specifically addressed, the Attorney General's Opinion inherently approves of the revenues from the energy minerals severance tax being used for the renovation, improvement, and/or construction of school district facilities, as the Edgemont School District was seeking funds from the energy minerals severance tax for such purposes. The Attorney General explained that not only could the school district seek funds for such projects from the county, but it could also seek funds for such projects from the State Energy Development Impact Fund. Because school districts can seek revenues from the energy mineral severance tax from the county for the renovation, improvement,

[12] SDCL 10-39A-8.1 provides in full:

> There is hereby created a special fund within the State Treasury, to be known as the Energy Development Impact Fund for the purpose of offsetting economic, social and physical impact resulting from energy development and production. The State Investment Officer is responsible for the investment of the energy impact funds. Expenditures from the fund shall be made only by special appropriations bill passed by the legislature. All money in the fund shall be budgeted and expended in accordance with chapters 4-7, 4-8, 4-8A and 4-8B.

and/or construction of its facilities, and because SDCL §13-16-26.2 prohibits the transfer of funds from the general fund to the capital outlay fund, the county and school district must be permitted to deposit the revenues from the energy minerals severance tax into the school district's capital outlay fund.

In summary, SDCL §10-39A-10 restricts the use of revenues from the energy minerals severance tax to "school and road purposes to offset social, economic, or physical impacts, either direct or indirect, resulting from energy development or production in the county." This statute is clearly distinguishable from the statutes analyzed in the South Dakota Attorney General's Opinion No. 83-46. First, SDCL §10-39A-10 does not mandate that the counties distribute the funds to the school districts. Second, SDCL §10-39A-10 restricts the eventual use of the proceeds. Thus, in order to encourage counties to allocate and distribute such funds to the school district and in order to ensure that such funds are used for the permissible purposes, depositing the revenues into the capital outlay fund must be permitted. This result is especially clear considering the restrictions that the South Dakota Legislature has placed on the use of funds in a school district's general fund and capital outlay fund as well as the prohibition on the transfer of funds from the general fund to the capital outlay fund. Finally, there is a strong inference in South Dakota Attorney General's Official Opinion No. 80-48 that school districts are permitted to utilize revenues from the energy minerals severance tax to renovate, improve, and construct their facilities. Thus, Harding County and the Harding County School District, consistent with the legislative intent of SDCL §10-39A-10, correctly deposited the revenues from the energy minerals severance tax into the school district's capital outlay fund for the renovation, improvement, and/or construction of its facilities to offset the social, economic, and physical impacts resulting from energy development and production in Harding County.

Sincerely,

Dylan A. Wilde

Dylan A. Wilde, JD/CPA

DAW/tka

7.6 CAPITALIZATION POLICY

Adopted January 6, 2004 Amended January, 2016

Effective December 31, 2003, the Capitalization Rate has been set for property owned by Harding County for it to be considered a Capitol Asset: **Personal Property:** (Furniture, equipment, etc.) shall be anything over $5,000. **Buildings** (that extends the useful life of the building) shall be anything over $25,000. **Roads & Bridges** – Any road reconstruction project that exceeds one mile in length or exceeds $100,000 in project cost and any new bridge that is added to the highway system in a location where one was not previously located.

Property placed in service at any time during a given year is treated as if it had been placed in service on the first of that year. This allows depreciation to be taken for the entire year in which the asset is placed in service. If the property is disposed of before the end of the estimated life, no depreciation is allowed for the year of disposition.

In accordance with SDCL 5-24, all County officers or employees will file a complete list of any public personal property in their care with the County Auditor annually on December 31st or within ten days thereafter. All public property listed shall include the actual cost or an estimated fair market value. Listings are required for protecting employee integrity and for insurance purposes.

7.7 MINERAL SEVERANCE FUNDS TO SCHOOL

Adopted April 7, 2015

Motion by Verhulst, seconded by Brown that the total of any allocation of Mineral Severance funds that are given to the Harding County School District 31-1 within a calendar year shall not exceed $600,000. Roll Call Vote: Wagner-yes; Brown-yes; Clarkson-yes; Verhulst-yes; DeBow-yes.