In this issue:

Roadmap to Constitutional Prayer • De Smet’s New Complex
Tips on Use of Employment Background Checks • Hot Springs Sandstone Beauty
Creating Ethical Dilemmas for the Staff
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Member SIPC/FINRA
It is a little early for you to be thinking about the Annual Conference, but the City of Spearfish and the League Staff have been working on it for a while now, and we want to make sure you are planning to attend. This year’s event promises to be one of the best ever, and the City is very excited to have the opportunity to have you all there, and is arranging some fascinating new features for you all to learn and enjoy.

The Conference schedule allows all affiliate groups to meet on either Wednesday afternoon or Thursday morning, and condenses the most intensive portions for the elected officials into the Thursday and Friday meetings. We realize it is often difficult for elected people to get away for the entire conference, so we hope you will be able to attend at least the two days – and the fall days in the Hills are really something to look forward to!

For those who are able to get away for more, there will be an entire program of interest to you, beginning on Wednesday morning and continuing until Friday at noon.

Another exciting opportunity is Wednesday evening event, allowing you to have some time on your own to explore all the City has to offer. We hope to arrange some “deals” for you with local businesses and establishments, also.

Our Thursday evening event will again be a highlight of the conference, with the banquet and a most amusing entertainment…you’ll just have to wait to hear what we have in store on this, but it is guaranteed to be a great time for all.

And of course, your days will be packed with informative training, learning opportunities, and the chance to discuss your local issues with your peers on the statewide level. At a registration fee of $100, which includes all the training sessions for three days, two breakfasts, two luncheons, and a dinner and entertainment, this is certainly the best deal your city will make all year!

Please see the agenda outline on page 6 for more information, and watch the magazine and your mail for more details!

Until next month, remember we are always available at 1-800-658-3636 or yvonne@sdmunicipalleague.org.

Yvonne Taylor
Executive Director

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**2014 Elected Officials Workshop**

**July 23, 2014**

**Ramkota Hotel, Pierre**

All elected officials are welcome to attend this five hour crash course on municipal government. Topics of interest are: Budgeting and Understanding City Finances; Best Practices on How to Manage City Staff when you are a Part Time Elected Official; Understanding Work Comp and Liability Issues; How to Conduct Effective and Efficient Meetings; and Open Meetings, Open Records and Executive Sessions. We realize your time is important and plan to give you the very best information and resources possible in a short time. We hope to see you in July.

Agenda and registration form will be posted online at www.sdmunicipalleague.org/sdmlevents and sent via email.
President's Report

Happy Spring! I think that it is finally here. I truly want to thank every city that hosted a district meeting this spring. I enjoyed visiting every community and visiting with elected officials from across the state. I can honestly say that as President, this has been one of the highlights of my year.

If you missed the district meetings, part of my speech was about mentioning a little something about each city attending the meeting. Although, a little more time consuming because at each meeting I had to change the end of it to talk about the cities there. It was very interesting research. The main thing I realized was that this state and a majority of our towns exist because of the building of the railroad in the late 1800’s and early 1900’s. A lot of time, towns were named after engineers or people of notoriety in the railroad business. Sometimes, the name stuck and sometimes towns’ names were changed as many as three times before settling on a final one. I also found very interesting stories, events and people associated with many of the towns across South Dakota. Being an almost lifelong resident of our great state, I feel like I know it even a little better now.

On the training side of things, I did attend the SDML Code Enforcement spring meeting and it was very informational. Every city has those “nuisance issues” and they had some good ideas how to go about remedying them.

June will be a busy month. As President, I have the pleasure of having the SDML board meeting in Wagner. I am looking forward to showing all the board members our great city and what things we have for entertainment. The SD Human Resource Association and the SD Governmental Finance Officers’ Association will be having their annual training/conference in Oacoma June 10-13. It looks like there are many educational and interesting topics on the agenda.

Have a great start to the beginning of summer and we will see you next month!

Rebecca Brunsing
President

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Pool Testing

Municipal swimming pools are no longer regulated by the State of South Dakota, however, these facilities should be tested for coliform bacteria during each week of operation.

All pool samples should be tested for “total coliform,” which is an indicator bacteria for drinking water and pools.

- “Total Coliform – Negative” means that no coliform bacteria were found and the water is safe.
- “Total Coliform – Positive” means that coliform bacteria were found.

Two or more consecutive positive samples indicates a general trend of bacteria presence in the pool. Corrective measures should be taken, such as superchlorination, to prevent a health related incident caused by poor water quality.

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SD Municipal Attorneys' Association Meeting

What: Luncheon Meeting

When: Friday, June 20, 2014
   12:00 p.m. to 1:00 p.m.

Where: Sioux Falls Convention Center

Visit www.sdmunicipalleague.org/sdmlevents for the agenda and registration.
Tentative Schedule

Tuesday
- All Day: SDPAA Board Meeting
- 2 p.m.: tee off SDML Golf Tournament
- 7 p.m.: SDML Board of Directors Meeting

Wednesday Morning
- 8 a.m. to 4 p.m.: Registration
- 8 a.m. to 4 p.m.: Exhibits Open
- 8 a.m.: ABC's of Municipal Websites
- 9 a.m.: Orientation for New Attendees
- 9 a.m.: SD City Management Association
- 9 a.m.: SD Municipal Electric Association
- 10 a.m.: SDML Pooling Meetings/Fun Info Session
- Noon: Safety Awards Luncheon

Wednesday Afternoon
- 1 p.m.: Elected Officials Workshop
- 1 p.m.: SD Municipal Attorneys' Association
- 1 p.m.: SD Building Officials' Association
- 1 p.m.: SD Governmental Finance Officers’ Association
- 1 p.m.: SD Police Chiefs’ Association
- 1 p.m.: SD Municipal Street Maintenance Association
- 4 p.m.: SDML Policy Committee Meetings
- 4 p.m.: SDML Auditing Committee
- 4 p.m.: SDML Nominating Committee

Wednesday Evening
- 5:00 p.m.: Exhibit Area Social
- 6:00 p.m.: Evening On Your Own

Thursday Morning
- 7 a.m.: SDML 11th Annual Walk/Run
- 7:45 a.m.: Breakfast and SDML Past Presidents' Breakfast
- 8 a.m. to 4 p.m.: Registration
- 8 a.m. to 11 a.m.: Exhibits Open
- 8 a.m.: Resolutions Committee
- 9 a.m.: Elected Officials Workshop
- 9 a.m.: SD Airport Management Association
- 9 a.m.: SD Association of Code Enforcement
- 9 a.m.: SD Governmental Human Resource Association
- 9 a.m.: SD Municipal Liquor Control Association
- Noon: Excellence in SD Municipal Government Award Luncheon

Thursday Afternoon
- 1 p.m.: SD Chapter, American Public Works Association
- 1 p.m.: South Dakota Fire Chiefs Association
- 1:30 p.m.: General Sessions

Thursday Evening
- 5:30 p.m.: President’s Reception
- 6:30 p.m.: Dinner and Entertainment

Friday Morning
- 8 a.m. to 10 a.m.: Registration
- 8 a.m.: Breakfast
- 8:30 a.m.: General Sessions
- 10:30 a.m.: SDML Annual Business Meeting and Election
This year, the Excellence in South Dakota Municipal Government award will be presented to an elected municipal official in South Dakota. The award recipient will be selected from nominations received by the South Dakota Municipal League Past Presidents’ Committee. All nominations must be submitted in writing by August 15, 2014. The award will be presented at the SDML Annual Conference in Spearfish on October 9, 2014.

Name of Nominee: ___________________________ Title: ________________________________

Address of Nominee: _____________________________________________________________

Significant contributions to the municipality: _________________________________________
_______________________________________________________________________________
_______________________________________________________________________________
_______________________________________________________________________________

Significant contributions to the community: _________________________________________
_______________________________________________________________________________
_______________________________________________________________________________
_______________________________________________________________________________

Significant contributions to other organizations: _______________________________
_______________________________________________________________________________
_______________________________________________________________________________
_______________________________________________________________________________

Significant contributions to South Dakota Municipal Government: __________________
_______________________________________________________________________________
_______________________________________________________________________________
_______________________________________________________________________________

Other Comments: _______________________________________________________________
_______________________________________________________________________________
_______________________________________________________________________________
_______________________________________________________________________________

Submitted by: ___________________________________________ Phone: ______________________

DEADLINE: August 15, 2014

Please submit to: South Dakota Municipal League
208 Island Drive, Ft. Pierre, SD 57532
FAX to 605-224-8655

Nominations are confidential
Additional supporting documents welcome.
South Dakota Building Officials’ Association
Summer Training

July 10 & 11, 2014 • Dakota Nature Park • Brookings, SD

Thursday, July 10

1 – 3 p.m.  SDBOA Business Meeting

7 p.m.  SD Building Officials Cook Out
Dakota Nature Park, 1705 32nd St South
Hosted by SDBOA
Contact: SDBOA
Phone: 800-658-3633, Fax: 605-224-8655
E-mail: christine@sdmunicipalleague.org
**RSVP for the Cook Out by July 1, 2014

Friday, July 11

8 a.m. – Noon  2012 IBC Use of Fire and Smoke Separations
Doug W. Thornburg, AIA, CBO
This seminar identifies the many and varied conditions identified in the IBC where fire and/or smoke separations are required. The discussion will focus on those required locations where fire-resistance-rated wall and horizontal assemblies, as well as smoke-resistant wall and floor construction, are either required by the IBC or utilized by design professionals as alternative approaches to code compliance. Such locations include the selective or mandated use of fire walls, fire barriers, fire partitions, smoke barriers, horizontal assemblies and other separation elements. The discussion will also address those separation elements that are not required to have a fire-resistance rating. Specific topics include: Separated occupancies, Control areas, Incidental uses, Institutional and residential occupancies, Exitways, Smoke compartments, Fire areas, Separate buildings, and Shaft enclosures.

Doug Thornburg, AIA, CBO, is currently Director of Product Development for ICC. In this role, he provides leadership in technical development and positioning of support products for ICC.

Registration fee: No charge for affiliate members and $95 for non-members.
No refunds will be given after June 27, 2014.

Accommodations: A block of rooms have been reserved under South Dakota Building Officials at the Hampton Inn & Suites, 3017 Lefevre Dr. Brookings, SD 57006 for Thursday evening; 605-697-5232. These rooms will be held until June 10, 2014.

REGISTRATION
South Dakota Building Officials’ Association Summer Training • July 10 & 11, 2014

Representing ____________________________

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July 10th Meeting: Number of people attending ______
July 10th Cookout: Number of people attending ______
July 11th Seminar: Number of people attending ______

Return registration by June 27th, 2014 to:
South Dakota Building Officials’ Association
208 Island Drive
Ft. Pierre, SD 57532
Fax: 605-224-8655
The following is from the presentation of the 2014 SoDace Code Enforcement Officer of the Year Award.

“It is my distinct honor to present the 2014 SoDACE Code Enforcement Officer of the Year Award.

The recipient of this award is responsible for all aspects of code enforcement in their city. This person works closely with property owners and managers, banks and real estate professionals to ensure that properties are maintained. No matter whom this code enforcement officer interacts with everyone is treated with the same high level of courtesy and professionalism. This individual is very consistent in his approach with the public and has never been accused of playing favorites. As a result of this, citizens are seeking this person out as a resource to improve their neighborhoods.

An extension of this individual’s responsibilities is to deal with disaster mitigation working with city staff to plan for emergencies and disasters. The unexpected and catastrophic blizzard in October 2013 resulted in this person stepping in and coordinating the city’s work with FEMA. Along with working with FEMA he coordinated the city’s clean-up effort which was no small feat when you are talking about coordinating contractors, property owners and others. Due to this his tireless efforts the city expects to receive the maximum allowed in reimbursements from FEMA and the State of South Dakota therefore lessening the financial impact to the city.

Within this individual’s nomination were many accolades but this one stood out the most: “this person is one of the most dependable staff members and continually seeks to serve the community and greatly enhance the residents’ quality of life.” To me that is the perfect definition of what all Code Enforcement Officers should strive to be and do.

Along with the work for the city, he mentors two high school students who are doing internships with the City’s Planning & Inspections Department through their Career Development Class. The students are introduced to municipal government, building inspections and code compliance but this person takes things a step further and encourages them in life work force lessons (ie enjoy what you do and save for your future). This individual has a wealth of professional experience and these students are surely to have their lives enriched by having this mentor.

He is an active member of his community and previously served as a Lawrence County Deputy Sheriff.

I am honored to not only call this person a colleague, but also a friend and it gives me great pleasure and pride to present the 2014 SoDACE Code Enforcement Officer of the Year award to Dave Smith of Sturgis.”
Justice Kennedy is better known for his rhetorical flair than his practical guidance. But his majority opinion in Town of Greece v. Galloway provides a roadmap cities can follow to stay out of trouble when beginning city council meetings with a prayer.

While anyone could give a prayer at a Town of Greece board meeting, from 1999-2007 all prayer givers were Christian. Some referred to Jesus in their prayers. The town recruited “board chaplains” from a local directory and nearly all congregations were Christian. Clergy crafted their own messages without any input from the town.

Susan Galloway and Linda Stephens argued that legislative prayer cannot contain sectarian language or themes such as the “death, resurrection, and ascension of the Savior Jesus Christ.” They also argued that prayers before town board meetings “create social pressures that force nonadherents to remain in the room or even feign participation in order to avoid offending the representatives who sponsor the prayer and will vote on matters citizens bring before the board.” Justice Kennedy’s 5-4 majority opinion rejected both arguments.

In Marsh v. Chambers, in 1983, the Court held the Nebraska Legislature didn’t violate the First Amendment by opening its sessions with a prayer delivered by a chaplain paid from state funds. The proposition that Marsh allows only nonsectarian prayer “is irreconcilable with the facts of Marsh and with its holding and reasoning.”

The confusion that Marsh might allow only nonsectarian prayers was caused by a footnote explaining that the chaplain in Marsh stopped referring to Christ after a Jewish state legislator complained. But this footnote, the Court explained, merely observed that the minister was trying to appeal to or not offend those he served.

Now for the first piece of practical advice. The Court warned, sectarian prayers can go too far “if the course and practice over time shows that the invocations denigrate nonbelievers or religious minorities, threaten damnation, or preach conversion.”

Galloway and Stephens argued that in terms of coercion, prayer in the town board meeting context is fundamentally different than prayer in the state legislative context because citizens can only address state legislatures by invitation, but citizens often attend town board meetings because they have business before the board. But prayers in both contexts aren’t intended for the public but for the lawmakers “who may find that a moment of prayer or quiet reflection sets the mind to a higher purpose and thereby eases the task of governing.”

Here is the second piece of practical advice: Coercion could be possible though “if town board members directed the public to participate in the prayers, singled out dissidents for opprobrium, or indicated that their decisions might be influenced by a person’s acquiescence in the prayer opportunity.”

It is noteworthy that this decision will have the biggest impact in the Second Circuit (Connecticut, New York, and Vermont) and the Fourth Circuit (Maryland, Virginia, West Virginia, North Carolina, and South Carolina). The Second Circuit had declared Greece’s prayer practice unconstitutional focusing on the Christian nature of most of the prayers. The Fourth Circuit in 2011 had ruled that only nonsectarian prayer at local board meetings is constitutional.

Lisa Soronen is the Executive Director of the State and Local Legal Center and a regular contributor to CitiesSpeak. CitiesSpeak.org is the official blog of the National League of Cities.

The South Dakota Police Chiefs’ Association presented the first ever South Dakota Police Officer of the year award on Thursday May 1, 2014 during their annual banquet in Deadwood. The award was created to recognize any law enforcement officer in the State of South Dakota below the rank of Chief, Sheriff or Director who exemplifies law enforcement in the state.

This year, nominations included both federal officers and city officers. Four officers working as a team were selected as co-officers of the year for rescuing a woman who had jumped or fallen into the Missouri River. The incident is outlined below. The award is sponsored by the South Dakota Police Chiefs’ Association and AAA South Dakota.

On July 21, 2013 at 2:05 a.m., Officer Jeremy McNinch of the Yankton Police Department was flagged down by a woman who stated that a friend of hers was involved in an argument and left very upset heading towards the Discovery Bridge where the woman got passed the fencing.

Officer McNinch along with Corporal Brad Parker, and Officers Monty Rothenberger and Rob Buechler responded to the river where Officer Buechler noticed a person in the water, 25 to 30 feet from the shore floating with the face the only visible part of the body above water.

After attempting to contact the woman by voice and attempting to throw ropes and life vests to her, Officer Buechler requested to go into the river after her. Officer Buechler was unable to reach her from where he entered the river, Officer McNinch then entered the river about 75 feet upstream and grab onto the victim and held on until Officer Buechler reached them.

Together they were able to get the woman to shore and with the help of Corporal Parker and Officer Rothenberger get her out of the river and into an ambulance saving the woman’s life.
Local health information can also be a powerful vehicle for understanding the health of a community—highlighting both the existence of problems and opportunities for improvement. Local data can also guide community action to support policy changes and improve program effectiveness.2

Engaging in a collaborative approach to understanding the health of a community is the first step to collecting information and data on local assets and resources, as well as gaps that exist regarding chronic disease prevention and control. Safe areas to be physically active, (i.e., parks, community centers), access to healthful foods, tobacco-free parks, and sidewalks are examples of assets and resources that help support a healthy community.1

Statistics on individual health behaviors, such as nutrition and physical activity, tobacco use; and access to health care services are examples of data that can be collected to understand factors that also contribute community health. Just as local government and leaders rely on the facts to inform their decision making process, a Community Health Needs Assessment is an effective, information gathering and data collection process which can help a community understand its health status and what resources are available to learn how to build a healthy community.

How to Understand your Community’s Health
In order to build a healthy community, it is important to understand that multi-sector collaborations of key stakeholders, strategic investments, as well as local policy, systems, and environment change, are necessary to create a healthy community environment.1 Key stakeholders, such as elected officials, local health advocates, community coalitions, schools, and business owners, are crucial to help initiate and drive the building process.

By Sandra Melstad, MPH, Public Health Consultant, South Dakota Department of Health

Investing in local, human, institutional, organizational, and environmental resources to support and build a healthy community is integral to long term health promotion and prevention of chronic diseases. A Community Health Needs Assessment is an effective, information gathering and data collection process which can help a community understand its health status and what resources are available to learn how to build a healthy community.

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Needs Assessment and Improvement Planning (CHNA) process is a comprehensive method that promotes information gathering and data collection to inform and support strategies to create local policy, systems, and environmental change.

Utilizing a Community Health Needs Assessment to Understand your Community’s Health
The community health needs assessment and improvement planning process provides an opportunity to develop an informed understanding of the health of a community and how to improve it.

“The CHNA process is considered as both the activity and product of identifying and prioritizing a community’s health needs, accomplished through the collection and analysis of quantitative and qualitative data, as well as used to inform the development of strategies and plans to address prioritized needs.” A comprehensive CHNA utilizes various methods to collect and analyze data including statistics on health status, risk factors, socio-economic factors, mortality, health needs, community assets, and data on the delivery of public health system essential services. The CHNA results will inform local strategic health improvement planning efforts to support community health promotion and chronic disease prevention.

Research conducted by the Robert Wood Johnson Foundation supports the goal of a CHNA and identified the following components as essential to supporting a healthy community:
1. Participation in shared community-based research by low socioeconomic populations to have ownership in the process and outcome;
2. Multi-sector efforts to reshape communities are political and require political skills to balance competing interests;
3. Community foundations, affinity groups, private sector funders can play a crucial role in leveraging public support for improving the health of a community;
Involvement of employers and business leaders in community health initiatives can be cultivated with small investments; and

Cultivate a large and diverse set of partners, including revenue sources for services, and explicitly address the issue of sustaining a project is a prerequisite of funders for investment.

**CHNA: Core Process Steps**

A CHNA is a community-driven process for improving communities’ health which is conducted through a series of core steps. The process assists community leaders in applying strategic thinking to prioritize their health issues and create population-based solutions to address them. The steps help guide a community through the how-to, what-for, here-we-are, and now-what stages of a community health needs assessment and are outlined in the *South Dakota Good & Healthy Community Health Needs Assessment and Improvement Planning Toolkit*, an evidence-based tool to guide the process. Steps include:

1. Build the Foundation
2. Understand Your Community
3. Plan & Collaborate
4. Gather Information & Collect Data
5. Define Community Health Priorities
6. Disseminate CHNA Results
7. Create a Community Health Improvement Action Plan

A completed CHNA provides an understanding of the health of a community and priority health needs, as well as helps identify steps to address those needs. The process will help provide answers to questions about the community’s health, including:

- How healthy are the residents?
- What is the health status of the community?
- What issues concern community residents?
- How do lifestyle behaviors of residents contribute to the community’s overall health status?
- What factors impact the health and quality of life of the community?
- How does the health status of the community compare to years prior, parallel communities, the state and nationwide?

**Next Steps**

There are a variety of tools and resources that may be used to support the CHNA process, including the *South Dakota Good & Healthy Community Health Needs Assessment and Improvement Planning Toolkit*. Conducting a CHNA is feasible and valuable to any community; however the methods used can vary according to its size and nature, the coalition infrastructure, partners and stakeholders, resources available, and other local factors. Identification of local health advocates and/or coalitions committed to improving the health your community is a valuable first step to initiating the CHNA process.

The CHNA process offers an opportunity to understand how to integrate components essential in creating a sustainable healthy community and quality investment in community-based prevention. This process can draw on expertise and perspectives of stakeholders to address health related issues facing communities. Public and private leaders will also be better armed with information and incentives to make health-wise policy decisions and investments to support long-term community health promotion and chronic disease prevention.

**Conclusion**

Sustainable efforts and investment to support a healthy community and its residents in adopting healthy behaviors can be best achieved at the local level. Engaging multi-sector stakeholders and partners, community health advocates, private and public funders, as well as local policy makers will help communities build local infrastructure to ensure long-term health. Regardless of the scope of a CHNA, it provides valuable insight into the health of a community to understand strategies necessary to improve and promote long-term community health.

The South Dakota Department of Health (SDDOH) can help a community of any size take its first steps to assessing its health and conducting a CHNA. Tools, resources, and technical assistance are available to assist a community in initiating this process, including the *South Dakota Good & Healthy Community Health Needs Assessment and Improvement Planning Toolkit*. Learn more at [http://goodandhealthysd.org/communitytoolkit/](http://goodandhealthysd.org/communitytoolkit/).

**References**

Cell Tower Siting “In Writing” Requirement: Not What it Seems?

By Lisa Soronen

In *T-Mobile South v. City of Roswell* the Supreme Court will decide whether a letter denying a cell tower construction application that doesn’t explain the reasons for the denial meets the Telecommunications Act of 1996 (TCA) “in writing” requirement.

T-Mobile applied to construct a 108-foot cell tower in an area zoned single-family residential. The City of Roswell’s ordinance only allowed “alternative tower structures” in such a zone that were compatible with “the natural setting and surrounding structures.” T-Mobile proposed an “alternative tower structure” in the shape of a man-made tree that would be about 25-feet taller than the pine trees surrounding it.

After a hearing, where city council members stated various reasons for why they were going to vote against the application, Roswell sent T-Mobile a brief letter saying the application was denied and that T-Mobile could obtain hearing minutes from the city clerk.

The TCA requires that a state or local government’s decision denying a cell tower construction permit be “in writing.” The district court and other circuit courts have held that the TCA requires a written decision and a written record that explain why the city council’s majority rejected the application.

The Eleventh Circuit disagreed relying on a plain reading of the statute. The TCA doesn’t say that “the decision [must] be ‘in a separate writing’ or in a ‘writing separate from the transcript of the hearing and the minutes of the meeting in which the hearing was held’ or ‘in a single writing that itself contains all of the grounds and explanations for the decision.’”

So, you might ask... why would the Court that decided whether the Affordable Care Act was constitutional resolve a seemingly trifling issue like what “in writing” means? Well, the majority of the cases the Supreme Court accepts involve circuit splits where federal courts have ruled differently on the exact same issue. Circuit splits arise in cases important and mundane and involve issues big and small.

And the impact of *T-Mobile South v. City of Roswell* on local governments should not necessarily be underestimated. First, the remedy for failing to meet the “in writing” requirement isn’t a do over—it is a granting of the permit. Second, meeting the “in writing” requirement as T-Mobile would have it might be harder than you think. Particularly in a small town, the person preparing the denial likely will not be a sophisticated telecom lawyer who understands the intricacies of the Telecommunications Act.

The State and Local Legal Center will file an amicus brief in this case supporting Roswell.

Lisa Soronen is the Executive Director of the State and Local Legal Center and a regular contributor to CitiesSpeak. CitiesSpeak.org is the official blog of the National League of Cities.


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**SOUTH DAKOTA BASIC CODE**

Affordable Codification for Small and Mid-Sized South Dakota Municipalities

A comprehensive model code of ordinances for municipalities featuring:

- Subject matter encountered by municipalities
- Annual state law updates
- A comprehensive index and a title devoted to your unique local ordinances
- Published by American Legal and the South Dakota Municipal League
- For more information call or e-mail deRicci Getty at 1-800-445-5588 or dgetty@amlegal.com

JUNE 2014
De Smet Donations Fund New Complex

By Rita Anderson, Director, De Smet Development Corporation

De Smet, South Dakota, known as Laura Ingalls Wilder’s ‘The Little Town on the Prairie’ accomplished a feat that was not so ‘little’ recently. The community solidified plans to build a 23,000 square foot Events and Wellness Center along with a new football field and track through a joint City and School District cooperation largely made up of individual donations.

There have been 878 people donate to the $4.5 million project which is over 80 percent of the City’s 1,086 population. The facility will serve as a theater, events center, exhibit hall, wellness center, and regional meeting facility adjacent to a new sports complex.

In 2006, the entire De Smet community was involved in a Community Assessment through Governor Rounds 2010 Initiative and a 20 Year Plan to address needs was established. This set the stage in the fall of 2012 when an owner of one of De Smet’s manufacturing companies came to the Development Corporation offering to contribute to a community project. The De Smet Development Corporation pulled out the 20 year plan and the need for a community center and wellness facilities came to the top of the list as well as the community’s desire for several years for a new football field and track. A Steering Committee was formed and the project was under way.

Rita Anderson, De Smet Development Corporation Director, said she and her committee presented the project to the De Smet City Council and De Smet School District in the fall of 2012 and the bids were awarded this past week. The City agreed to contribute $400,000 and take ownership of the facility if they were successful in being awarded a $500,000 Community Development Block grant. The School agreed to contribute $500,000 to the athletic complex as well as take ownership of this facility. The City, School District and State CDBG grant are paying approximately one-third of the project. Over $3 million has come from businesses, alumni and individuals in the community. Along with the large Exhibit Hall, theater and meeting rooms, the Center includes an indoor walking track, locker rooms, restrooms, kitchen and concessions area to serve adjacent to the new football field and track.

Anderson said the fund raising had three major turning points. The first was when several local businesses and families contributed considerable amounts to ‘kick-start’ the project.

The second was in the middle of the campaign last summer when donations seemed to have reached a plateau, the owner of Lyle Signs who had made the original contribution to the project made a challenge to the community that he would match all donations received in a two week period, up to $200,000. He also made a plea that over one-half of De Smet’s population contribute to the project to show community support. The grand total for the two week Matching Challenge was $332,559 with 687 people donating at that point. (The objective for one-half the population was 545 people so both goals were achieved plus more.)

The third was when the project came to an exciting and emotional ending when the project bids were opened and the costs were over $1 million higher than estimated. With the 30 day bid requirements to award or reject the bids in that time frame, the Project Steering Committee was dismayed on how they could raise over $1 million from this community who had already given so much. The De Smet Hospital had also completed a $2 million fund raising campaign at the same time. They were able to
lower building costs by working with the low bidders but were still thousands of dollars short of raising enough to be able to go forward with the project. Rita said, “The community really stepped forward and we were able to raise $450,000 in 24 hours. In fact, when we went in front of City Council to ask them to award the bids, we were still $25,000 short. But then one business person called me during the meeting and said that he would donate $10,000 and one of the Committee members at the meeting said their family would donate the needed $15,000. It was very last minute with many doubters saying that it could not be done. All of the project supporters at the Council meeting stood up and cheered and hugged when the Mayor said ‘Let’s Build It!’. It was very heartwarming and inspiring to see the community come together like this to make it happen.”

Travelers through De Smet can see the groundwork for the football field and track taking place along Highway 14. Construction on the building is to begin in a few weeks with completion scheduled in about 10 months. The City will operate the building and is budgeting for its maintenance. The City also plans to hire a full-time recreation director to have offices in the Center. Fund raising is continuing for furnishings for the interior of the building. This is an excellent example of local entities working together along with community spirit to bring needed amenities to a rural community.

**Ground breaking for the De Smet Events and Wellness Center.**

**RSA Architects rendering of the building.**
New Cars Required to Have Rearview Cameras

The U.S. government said it will require new cars and light trucks sold in the United States to have rearview cameras by May 2018, a regulation intended to prevent drivers from backing into pedestrians.

The National Highway Traffic Safety Administration said the new requirement will apply to all vehicles under 10,000 pounds (4,500 kg), including buses and trucks.

“Rear visibility requirements will save lives, and will save many families from the heartache suffered after these tragic incidents occur,” said NHTSA Acting Administrator David Friedman said in a statement.

NHTSA said that 58 to 69 lives will be saved each year once all cars and light trucks on the road have this technology.

There are, on average, 210 fatalities and 15,000 injuries per year caused by backover accidents, the agency said. Children under 5 years old and adults 70 and older account for more than half of all backover fatalities each year.

Many automakers already are installing rearview cameras in response to consumer demand.

Safety watchdogs welcomed the new rule but faulted the Obama administration for not moving sooner. In 2008, Congress directed the Transportation Department, which oversees NHTSA, to issue a rear visibility standard by 2011 but it was repeatedly delayed.

“While the administration delayed the rule, more children died in backover accidents. The cost of regulatory delay, in human lives, could hardly be more clear than it is today,” Robert Weissman, president of Public Citizen, said in a statement.

Cameras must be able to give drivers a 10-foot-by-20-foot (3-meter-by-6-meter) field of view directly behind the vehicle, NHTSA said. The video system also must meet other requirements, including image size.

The agency estimated that it would cost between $132 and $142 to equip each vehicle with a rearview camera that meets the requirements.


Reporting by Eric Beech; Editing by Bill Trott and Marguerita Choy.
The U.S. Equal Employment Opportunity Commission (EEOC) and the U.S. Federal Trade Commission (FTC) co-published two technical assistance documents that explain how the agencies’ respective laws apply to background checks performed for employment purposes. One document is for employers; the other is for job applicants and employees. This is the first time that the two agencies have partnered to create resources addressing concerns in this key area. The documents are available on the EEOC’s website: Background Checks: What Employers Need to Know (http://www.eeoc.gov/eeoc/publications/background_checks_employers.cfm) and Background Checks: What Job Applicants and Employees Should Know (http://www.eeoc.gov/eeoc/publications/background_checks_employees.cfm).

The agencies emphasize that employers need written permission from job applicants before getting background reports about them from companies in the business of compiling background information. Furthermore, they reaffirm that it is illegal to discriminate based on a person’s race, color, national origin, sex, religion, age (40 or older), disability, or genetic information, including family medical history, when requesting or using background information for employment, regardless of where the information was obtained.

At the same time, the agencies want job applicants to know that it is not illegal for potential employers to ask about their background, as long as the employer does not unlawfully discriminate. However, when people are turned down for a job or denied a promotion based on information in their background reports, they have the right to review the reports for accuracy.

“The laws enforced by the EEOC and the FTC intersect on the issue of employment background checks, so this was a unique opportunity for the agencies to work together to provide user-friendly technical assistance to our stakeholders,” said EEOC Legal Counsel Peggy Mastroianni. “The No. 1 goal here is to ensure that people on both sides of the desk understand their rights and responsibilities.”

“The FTC is pleased to work with the EEOC to help ensure that employers and potential employees have a solid understanding of their rights and responsibilities,” said Jessica Rich, director of the FTC’s Bureau of Consumer Protection.

The EEOC enforces federal laws against employment discrimination; more information is available at www.eeoc.gov. The FTC enforces the Fair Credit Reporting Act, the law that protects the privacy and accuracy of the information in credit reports. More information is available at www.ftc.gov.
Public Employer Dodges Liability for Employee’s Outrageous Scheme

By Jerry L. Pigsley and Kelly M. Ekeler, Harding & Shultz, P.C., L.L.O.

WARNING: The facts in this case are outrageous. Despite the outrageous facts, in Wilson v. Cook Cnty., No. 13-1464 (7th Cir., Feb. 10, 2014), justice prevailed and municipal leaders are provided some reassurance that they will not be held responsible for the autonomous actions of tortfeasing employees. Still, this case reminds municipalities of the importance of pre-hire screening.

Incredulous Scandal
Between 1984 and 1998, Phil Vanaria was employed with the Adult Probation Department for Cook County, Chicago. In 1998, Vanaria was terminated after it was discovered that he traded looser conditions of probation with sexual favors from female probationers. In 2002, a Cook County Commissioner hired Vanaria as an assistant and political operative. Vanaria’s position with the Commissioner was excluded from the prohibition against political favoritism, meaning that Vanaria was hired through political patronage and not through the typical competitive process.

In 2004, Vanaria transferred his employment over to a Cook County hospital. Vanaria’s position at the hospital was also exempt from the prohibition against political patronage. Thus, the hospital, similar to the Commissioner, did not conduct a background check on Vanaria.

In 2005, a pharmaceutical representative complained to the hospital that Vanaria had tried to bribe her to give him a massage. Vanaria was not disciplined, but received oral counseling for the incident. In 2007, Vanaria contacted a massage therapist, Krystal Almaguer, and told Almaguer the hospital had a job opening for her. In reality, no such job existed and furthermore, Vanaria had no authority to hire new employees.

Believing Vanaria’s story about a job opening, Almaguer turned in her resume to Vanaria. Vanaria required Almaguer to complete new-hire paperwork. While completing the
paperwork, Vanaria also required Almaguer to close his office door, remove her clothes, and massage him. A few days later, Vanaria required Almaguer to give him a massage with inappropriate stimulation.

In an effort to prolong the scheme, Vanaria enlisted a female friend to pose as HR for the hospital. Under Vanaria’s direction, the friend called Almaguer and told her the hospital had a new job opening that would pay even more, but the new opening required Almaguer to give Vanaria another massage. Almaguer called the hospital’s HR department directly, learned that she had been duped, and contacted the police. Almaguer then sued the County under the Equal Protection and Due Process Clauses of the Fourteenth Amendment, and under Title VII of the Civil Rights Act of 1964.

Judicial Review
The Seventh Circuit Court of Appeals rejected Almaguer’s Equal Protection claim, holding that the County did not have a widespread custom or practice that caused Almaguer’s injury. The Court cited the rule that although a municipality may be liable when its official policy or custom inflicts the injury, it is not liable simply because it employs a tortfeasor. The Court dismissed Vanaria’s prior incident with the pharmaceutical representative, stating that although there was no bright-line rule for what constitutes a custom or practice, it is clear that a single incident did not suffice.

The Court also rejected Almaguer’s Due Process claim which alleged that the County’s practice of failing to screen political employees caused her to suffer a violation of her due process right to bodily integrity. The Court relied on the fact that even if the hospital knew about Vanaria’s history of abusing his power to obtain sexual favors while employed in the Probation Department, the hospital did not vest any power in Vanaria. Rather, Vanaria’s position at the hospital was merely administrative and he had no authority to supervise employees or make hiring decisions.

The Court summarily rejected Almaguer’s Title VII claim because, although a job applicant may have a claim under Title VII, the applicant must have been passed over for a job that actually existed in order for there to have been an “unlawful employment practice.”

Conclusion
The Court’s decision described above in Wilson v. Cook Cnty., is not binding precedent in South Dakota. Nevertheless, the Wilson Court applied the same general principals of employer liability followed by South Dakota courts. But a slight difference in the facts could have led to a different result. Instead of taking chances by hiring an employee like Vanaria, South Dakota municipalities can reduce their risks by conducting appropriate background screens for all employees prior to hiring.

Editor’s Note: This article is not intended to provide legal advice to our readers. Rather, this article is intended to alert our readers to new and developing issues and to provide some common sense answers to complex legal questions. Readers are urged to consult their own legal counsel or the author of this article if the reader wishes to obtain a specific legal opinion regarding how these legal standards may apply to their particular circumstances. The authors of this article, Jerry L. Pigsley and Kelly M. Ekeler, can be contacted at 402-434-3000, or at Harding & Shultz, P.C., L.L.O., P.O. Box 82028, Lincoln, NE 68501-2028, j pigsley@hslegalfirm.com; kekeler@hslegalfirm.com.
Story by Paul Higbee. Photos by Bernie Hunhoff.

Bugling elk and golden aspen leaves signal fall’s arrival in the Black Hills. But you know the season has set in fully when steam rises off Fall River on cold mornings.

The swift, clear river churns its way through Hot Springs, and its geothermal warmth and that of about 75 other nearby hot springs inspired the town’s name. Fall River mist is a pretty sight in a town surrounded by natural beauty and distinguished by handsome sandstone architecture. It’s easy for outsiders to pop in, bask in Hot Springs’ glow and quiet pace, and decide life here must be pretty good.

But there’s plenty of work to do in this southern Black Hills town of 3,700. In recent months residents have worked to save two local institutions: Evans Plunge and the U.S. Veterans Administration health care center. As of July 1, 2013 the Plunge, the world’s largest naturally heated indoor swimming pool, is municipal property after city voters approved the purchase. Meanwhile, Hot Springs mounted an aggressive “Save the VA” campaign as the Veterans Administration nationally responded to recommendations to restructure and centralize health services, likely closing some centers. Public hearings in Hot Springs and nearby communities in South Dakota, Nebraska and Wyoming are finished, and Hot Springs residents and the area’s vets await word from Washington, D.C.

When it comes to discussions about saving things central to Hot Springs’ essence, the signature sandstone buildings come up quickly. There are between 35 and 40 sandstone structures, ranging from small homes and shops, to three and four story public buildings, to the massive and historic five story Evans Hotel, used these days for apartment living. The good news is that Black Hills sandstone holds up well. In some parts of the country sandstone typically contains too much iron. Eventually blocks show signs of rust, first discoloring the stone and over time breaking it down. That’s relatively rare here.

The bad news is that use of sandstone as building material peaked a century ago or more. The quarries are long gone, along with the craftsmanship behind the construction. So when a problem develops in a historic building, finding stone and qualified contractors can prove difficult. That was the case, recalls Hot Springs resident Sheila De Vries, when fire damaged part of the Evans Hotel in 1979.

De Vries first visited Hot Springs in the early 1970s and immediately noticed the beautiful sandstone buildings. “I’d never seen anything like it,” she says. “It’s a real source of pride for Hot Springs. When I think about the town it’s the water and sandstone buildings that first come to mind.”

The stone was quarried in several nearby locations, and used not only in Hot Springs but shipped across and out of state. Builders likely had some idea about the low iron content, and certainly they admired the coloration — pinks, golds, dusty off-white. Worked into a building, the color changes with the seasons depending where the sun is positioned. In late fall, about the time when steam begins rising off Fall River, the sun’s low angle turns the pinks and golds an especially rich color.

Part of the craftsmanship behind building with sandstone was to shape the stone with facets to best reflect sunlight. Sometimes, though, if builders believed another building would rise immediately next door, or if an exterior wall faced just a back alley, they left the stone rough. Hot Springs quarry men and builders took great pride in their professions. More than a century later Peggy Sanders is a bit awed by them. “I look at photos of them at work and I don’t know how they did it, considering the tools they used,” she says. “It was the days of block and tackle.”
Sanders is an excellent source of information about Hot Springs’ past, and for contemporary community commentary. Her family has ranched in Fall River County for six generations, plus she’s a nationally published author and columnist.

A particularly impressive sandstone building, to Sanders’ thinking, is the three-story administration building at the state Soldiers Home, completed in 1890. “They built it in just a year,” she says. “These days it takes that long for building permits.”

Big public structures like that were often built in styles reflecting classical Roman and European architecture. That was the case when Hot Springs commissioned a four-story public school building in 1893, and it’s possible the elevated style suggested that function should be elevated, too. The school, notes Sanders, featured indoor plumbing years before most South Dakota students were liberated from outhouses.

It’s important to stress that sandstone quarry men were not miners. “Hot Springs was one town in the Black Hills not built around mining,” Sanders says. Another writer, former state poet laureate Badger Clark, attached significance to that historical fact 90 years ago. He wrote that Hot Springs never embraced gambling and prostitution, unlike towns built by “adventurers who swarmed into the northern Hills at the call of gold.”

To understand Hot Springs, says Sanders, you must realize the extent to which it “was founded around the water. In the late 1800s it was proclaimed to be healing water, which no one can claim today, although it’s OK to say it can be therapeutic.”

Long ago, what did Hot Springs boosters claim their water healed? A commercial club booklet listed “nervous complaints, indigestion and intestinal disorders, pulmonary affections, diseases of the urinary organs, gout, skin diseases and rheumatism.”

Lots of early residents recognized the town-building potential the water held, and none more so than Fred Evans. Sanders has researched Evans and his entrepreneurial ventures that drove him deep into Dakota Territory from Sioux City, Iowa, first as a wagon freighter. In Hot Springs, shortly after South Dakota statehood in 1889, he built Evans Plunge and the majestic Evans Hotel, using sandstone from his own quarry. He also shipped stone to distant locations including Sioux City, where Hot Springs sandstone is still evident. All the while he was meeting with railroad executives, urging them to lay rails into Hot Springs. Visitors first stepped off trains at the Hot Springs depot in 1892, and some historians consider that the birth of Black Hills tourism as a true industry.

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Warm water and healing were so intertwined in 19th century thinking that South Dakotans considered Hot Springs the logical location for all sorts of medical services. “We’ve had many hospitals here over the years,” says Sanders, “specializing in polio, cancer, tuberculosis and other diseases. Hot Springs was home to an early hospital treating alcoholism.”

Responding to a national movement in the 1880s to build soldiers homes — institutional residences for veterans — the Dakota Territorial Legislature selected Hot Springs as the site for old soldiers to spend their final years. Territorial Governor Louis Church vetoed the project because of mounting public debt, but legislators were so adamant that a soldiers home be built in the Southern Hills they overrode the veto. The home opened after statehood on Thanksgiving Day 1890.

The Veterans Administration arrived 60 years after the Soldiers Home took form, occupying the former Battle Mountain Sanatorium. The Soldiers Home (known officially now as the State Veterans Home) is moving forward with a massive reconstruction project that will modernize every aspect of residents’ day-to-day living. Meanwhile, says Sanders, the Veterans Administration headlines “have had us on a roller-coaster.”

Not that tourists throughout the summer of 2013 in Hot Springs sensed that. They came in big numbers to a town that, it can be argued, has long claimed the most diverse range of visitor attractions in the state. As the 20th century unfolded, Hot Springs learned there were purely recreational uses for its water as well as therapeutic ones. In time fun surpassed healing as the main reason visitors came to town. The water slides at Evans Plunge can be viewed as tangible symbols of that shift.

In 1903 popular Wind Cave National Park was established north of town, protecting a cave famous not only for spouting air but as one of the world’s largest cavern systems. In 2013 the park marked 100 years as a major bison preserve. South of town, between 1946 and 1949, the U.S. Bureau of Reclamation developed Angostura Reservoir, enhancing irrigation and creating a popular boating and fishing destination.

Nobody could have guessed the tourism enterprise that stemmed from discovery of 26,000 year-old mammoth bones in 1974. Columbian and wooly mammoths perished in a sinkhole where Hot Springs sits today, and an ongoing paleontology dig continues to reveal knowledge about the extinct species. Scientists and visitors come from around the world.

In 1988 Oregon rancher Dayton Hyde relocated to beautiful, rugged land south of Hot Springs and established the Black Hills Wild Horse Sanctuary. Today about 600 mustangs roam 11,000 acres. As is true for the mammoth dig, the sanctuary exists for reasons beyond visitor entertainment and education, yet impacts Black Hills tourism significantly.

No discussion of Hot Springs recreation can be complete without mention of the much loved Southern Hills Golf Course, municipally owned. It was expanded to 18 holes several years ago in spectacular fashion, and for the past dozen years both *Golf Weekly* and *Golf Digest* magazines have ranked it among America’s best.
A good first stop for visitors wanting to get a feel for Hot Springs is the excellent Pioneer Museum atop a high hill overlooking downtown. The museum building itself is an artifact — the sandstone school that boasted indoor plumbing in 1893. Down the hill from the museum there can be no denying more buildings stand vacant than business leaders would like, yet there’s regularly a flow of traffic and customers. There’s a healthy number of professional service businesses and more restaurants throughout town than most people would expect in a community this size. Along Chicago Street shoppers will find one-of-a-kind shops, including Black Hills Books and Treasures, Works in Clay Gallery and Dove Creek Gift Shop and Gallery. Dove Creek features its own pottery, created just down the street in the style of ancient pueblo cultures. Workers with disabilities from Black Hills Special Services Cooperative are a key part of Dove Creek Designs Pottery production, and they made big news last winter at a National Governors Association meeting in Washington, D.C. Their products were selected for presentation to every governor in the nation, an acknowledgment of how employees with disabilities contribute to the American work force.

Hot Springs sometimes seems a bit separate from other South Dakota towns because of its sandstone, unusual history, and natural assets that are stranger still. But a walk through downtown, where business people discuss their hopes for new life coming to those vacant buildings — some of them sandstone — is a reminder that most small towns face similar challenges in the 21st century.

Besides, observes city administrator Harley Lux, there are ways of measuring community vitality other than counting businesses and people. “Sales tax revenue is growing,” he says, adding that positive sales tax figures helped Hot Springs land a couple new restaurants in recent months.

An environment where there is business opportunity could bode well for those downtown sandstone shops. The first step toward taking care of any type of building is to make certain it doesn’t stand empty for long. In terms of fighting for local institutions, knowing its history well enough to build on it, and welcoming visitors and newcomers and their ideas, Hot Springs is an example of a place that does lots of things right. Believing in itself as much as its visitors do when they first see that beautiful water and sandstone will be vitally important.

This article is reprinted from the September/October 2013 issue of South Dakota Magazine. For more information visit www.SouthDakotaMagazine.com.
Addressing Rampant Employee Disengagement

By Trevor Wilson

An alarming Gallup poll published in 2013 titled State of the American Workplace Report (www.gallup.com/strategicconsulting/163007/state-american-workplace.aspx) indicated that most American workers either hate their jobs or don’t care one way or the other about them. Less than a third of Americans are actively engaged in their work, meaning they’re passionate about it, enthusiastic, and energetic. They’re consistently productive and high performing.

Gallup estimates the some 20 million who are actively disengaged—openly negative and unhappy—have a staggering effect on the economy, possibly costing the United States $450 to $550 billion each year in lost productivity. To engage this 70 percent—the 20 million who are actively disengaged and 50 million who are passively disengaged—leaders need to change how they view human capital.

There is a solution to engaging employees. I call it human equity or the unique assets each individual brings to the workplace that often go unrecognized. Identifying and leveraging your own human equity, as well as that of employees, addresses not only the incredible waste of human capital illustrated in the Gallup poll, but also related concerns that leaders can share, including the constant need for innovation. These challenges are not unique to the United States.

There is a reason why such executives as Warren Buffet and former General Electric CEO Jack Welsh sought talent beyond traditional criteria like knowledge and skills, which are also important. Here is a method for uncovering valuable intangibles in employees that I call the SHAPE V talent model:

**Strength.** Consider strength as defined by the 1999 Gallup StrengthsFinder study: “consistent near-perfect performance in an activity.” The study identifies 34 qualities that can be innate and, unlike skills, are not learned. Individual employees and managers should not force a square peg into a round hole.

If, for example, an employee’s near-perfect, near-effortless strength is in research and analysis but not so
much in data management, managers should allocate this resource accordingly.

**Heart.** Have you ever wondered what comes first, whether you’re good at something because you like it, or you like it because you’re good at it? The chicken-or-egg question aside, what matters is the passion one has for a talent. This includes activities a worker would do even if he or she didn’t have to do it on the job.

If a talented manager won the lottery and decided to quit his job, for example, he might be inclined to manage people in a local political campaign or take the helm of his son’s little league team.

**Attitude.** An employee might have three general attitudes, according to a branch of study in positive psychology. First, there are those who approach their work as a job, who seek only a paycheck and benefits.

The second group includes those with a career perspective who seek advancement. The third group views their work as a calling and deeply connects with what they do every day.

**Personality.** In 2009, nearly $500 million was spent on personality testing in North America alone. A reliable test isn’t valuable in so much as it reveals differences among workers, which are most likely already apparent.

The value of these tests is in showing how and where differences lie. Understanding differences can lead to an appreciation for how and why coworkers perform and improve the synergy of teams.

**Experience.** Who is the person you’re sitting next to at work; who is she when she’s not making business calls, scheduling meetings, or troubleshooting problems? How does her race, religion, economic background, family situation, and overall lifestyle influence or not influence her work life?

More importantly, how might her life beyond work offer diversity of thought in the workplace? Life experience should not be overlooked when assessing talent.

**Virtue.** “Value in action, that’s virtue” is what I say. Candor, temperance, courage—these traits preempt problems like public scandals, harassment, and discrimination. They also foster a positive moral pragmatism among coworkers and practical wisdom among leaders.

With social media continuing to expose bad behavior and employee morale revealed to be at a stunning low, this is a significant quality in the ongoing search for the best talent.

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**Endnotes**


2. Wilson, T. (2013). *The Human Equity Advantage*, 128–129: “There are well over 2,500 personality questionnaires on the market, and each year dozens of new companies appear with their own ‘new’ products . . . One of the most popular personality tests is the Myers-Briggs Type Indicator (MBTI). . . One of the most reliable personality tests is the Kolbe, which divides people into four basic personality types: fact finders, follow-throughs, quick starts, and implementers.”

Trevor Wilson is CEO, TWI Inc., Toronto, Ontario, Canada (info@twiinc.com), and author of *The Human Equity Advantage* (humanequityadvantage.com).

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Mind the Gap!

By Christopher Bauer

When conceptualizing ethics, most organizations seem to blur their ideas about ethics, ethics codes, codes of conduct, compliance mandates, values, and even social outreach into one large amorphous lump. This, unfortunately, reduces the clarity of each. This is complicated still further by organizations’ commonplace assumption that training on any of these areas somehow mysteriously covers them all. My experience is that this shows up most frequently in the form of companies, agencies, or associations who provide compliance training or a review of the rules and then feel they’ve somehow got ethics fully under control.

Teaching about the rules and compliance in the absence of training on ethics and values creates a dangerous knowledge and skills gap. After all, in addition to knowing what the rules are, employees also need to build their abilities to make good decisions when there are no specific rules to follow. Additionally, of course, effective values training also helps reinforce the many reasons to follow the rules in the first place. The creation of an effective culture of ethics requires the gapless integration of strong codes/compliance training with equally strong ethics and values-based programs.

In my experience, the lack of effective programs focused on ethics and organizational values – and how to persistently bring those values to life through appropriate day-to-day decision-making – represents the single most frequent and significant gap between desiring a culture of ethics and actually creating one.

Is there that type of gap in your organization’s training? Probably. Is your organization attending to those gaps? Perhaps, but odds are – for a variety of reasons – are that they aren’t. Most companies simply haven’t yet come to understand the significant ROI for closing that gap.

If you don’t have the information you need to advocate for truly effective ethics and values training, let me know and I’ll be happy to provide you with any facts, figures, or articles helpful to you for making the case.

Christopher Bauer helps companies create and implement high-impact, high-ROI ethics and values training programs. In addition to consultation on program development and implementation, he also provides keynotes and seminars on how to reduce costly employee ethics problems. Information on his most-frequently requested keynotes and seminars can be found at http://www.bauerethicsseminars.com/programs.html.

Interested in ethics commentary and resources? Additional resources can also be found by following Christopher Bauer (@ethicstweet and @TheTrustFoundry) on Twitter.

"Better Ethics NOW: How To Avoid The Ethics Disaster You Never Saw Coming (Second Edition)" is available for purchase.

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MSRB Outreach Campaign Highlights EMMA’s Tools for State and Local Governments

By the Municipal Securities Rulemaking Board

The Municipal Securities Rulemaking Board (MSRB) is engaged in a national, multi-year campaign to increase its outreach to state and local governments that issue municipal securities. The effort aims to share with municipal entities how the MSRB’s Electronic Municipal Market Access (EMMA®) website, http://emma.msrb.org/Home, is a resource for evaluating municipal finance options, complying with disclosure requirements and communicating with investors.

The MSRB’s EMMA website is an online platform that provides free public access to financial disclosure documents and trade data on more than 1.2 million outstanding municipal bonds. Municipal borrowers file their disclosures and other information on EMMA to make them available to investors.

The MSRB’s “Putting EMMA to Work for You” campaign seeks to raise awareness by small to mid-sized municipal issuers about the importance of communicating with their investors on an ongoing basis. Through a combination of local seminars and webcasts, the MSRB plans to reach all 50 states over the course of the next two years. State and local governments and related organizations can schedule a session with their group by contacting Ritta McLaughlin, the MSRB’s chief education officer, at 703-797-6714 or rmclaughlin@msrb.org.

At each outreach session, the MSRB provides practical guidance and tips about how issuers can use the EMMA website to their advantage to communicate with investors and comply with their disclosure obligations. The MSRB’s goal is to contribute to improved financial disclosure practices and enhanced transparency for the municipal market.

The campaign builds on the MSRB’s existing education and outreach program, which includes hosting seminars around the country, presenting at industry events and providing free online educational resources. The MSRB’s online State and Local Government Toolkit is frequently updated with new videos, guides and resources to assist issuers in understand the process of issuing municipal bonds, the rules governing the municipal market, and the market transparency tools available on the EMMA website. Access the toolkit and other resources on the MSRB’s website at msrb.org.

The MSRB encourages municipal market participants to explore the organization’s website to access up-to-date information and sign up for MSRB email updates.

The MSRB protects investors, state and local governments and other municipal entities, and the public interest by promoting a fair and efficient municipal securities market. A Congressionally-chartered, self-regulatory organization, the MSRB is governed by a 21-member board of directors that has a majority of public members, in addition to representatives of regulated entities. The MSRB is subject to oversight by the Securities and Exchange Commission.

Creating Ethical Dilemmas for the Staff

By Martha Perego

Ask or direct a staff member to do something unethical, and you place the person in an untenable position of great risk. How many will muster up the courage to challenge their supervisors?

If they do the right thing, will they face possible job loss or retribution? Or do they go along with the hope that doing so will preserve their employment?

And if the unethical conduct is later revealed, how do they know for certain that they too won’t be held accountable for their actions? Those who create ethical dilemmas for their employees demonstrate a complete failure of leadership.

How do leaders do this? The Machiavellian types take the bold approach and just order their direct reports to do things that are clearly unethical. Faced with a direct order or the opportunity to please the boss, who wouldn’t comply?

The Subtle Slide
The vast majority of ethical dilemmas are created by leaders in a more subtle manner. It’s the friendly request for assistance on a personal matter.

The lack of clear communication, often accompanied by a sense of urgency to get it done, sends the tacit message to staff that it’s okay to violate a rule or policy. In this instance, to accomplish the leader’s desired outcome.

Perhaps it is a pattern of a leader’s noncompliance with organizational protocol that leaves staff with the impression that the leader is actually exempt from the rules. This can include a leader’s failure to act on information delivered to the leader by staff, and a leader’s failure to respect boundaries. Worse yet are those requests that are implicitly coercive.

Here are just a few real-world examples for consideration:

- A New York State Supreme Court Justice was recently censured for using public resources for personal gain. The judge repeatedly had staffers pick up her child at school and then babysit either in the courthouse or at her home. She also had her office staff drive her on personal errands.
- A city manager obtained a $10,000 unsecured, below-market-rate loan from the city to use as a down payment on a home. The loan, which was not outlined in the manager’s employment agreement, was never

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approved by city council. When the request was submitted to finance, the check was issued. All of this was later disclosed by a district attorney’s investigation. The city attorney also had full knowledge of the loan.

- An audit of county-issued credit cards revealed numerous personal charges made by the county manager to the county card. It was a clear violation of county policy. The personal charges were hard to miss since they included doctor visits, clothing purchases at major retail outlets, and items for the home. Yet the credit card bill was paid each month, often without receipts, explanation, or reimbursement of the personal expenses.

- In a case from the past decade, the former city manager and deputy city manager of San Diego each paid $25,000 in financial penalties for their roles in misleading investors in municipal bonds. The Securities and Exchange Commission (SEC) charges alleged these officials and others knew the city had been intentionally underfunding its pension obligations so that it could increase pension benefits but defer the costs.

The charges also alleged that they were aware that the city would face severe difficulty funding its future pension and retiree health care obligations unless new revenues were obtained, benefits were reduced, or city services were cut. The SEC alleged that despite extensive knowledge, they failed to inform municipal investors about the severe funding problems in bond disclosure documents.

The city manager signed the closing letter for one of the bond offerings, falsely certifying that it was accurate and did not contain any misleading statements. The deputy regularly reviewed and revised the false and misleading disclosure documents, and signed the closing letter for two of the five bond offerings.

In doing so, the deputy falsely certified the disclosures as accurate and not containing any misleading statements. She also reviewed and made presentations to the rating agencies.

Culture Matters

There are more facts that make each of these situations unique. But each shares a common thread: In the face of unethical conduct by the leader, opportunities for staff to intervene to stop that conduct were ignored.

From the individual asked to pay a bill or issue a check in violation of city policy to the department director who had oversight responsibilities, all failed in their ethical responsibility to act. What about all the others who, while not central to the drama, certainly had knowledge of the activity? Why didn’t they intervene?

The takeaways from these examples? Leaders, it is not all about you! Consider the impact of your conduct on the employees and the organization before you act. Don’t create ethical dilemmas for your staff.

Lastly, work to ensure that your organizational culture empowers employees to challenge unethical conduct no matter where it comes from.

Martha Perego is the Ethics Director for ICMA in Washington, D.C., mperego@icma.org.

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Cities Save on Traffic Control Products

NLC is pleased to announce that TAPCO (Traffic & Parking Control Co., Inc.) has been awarded a three-year contract to provide traffic control products and solutions through U.S. Communities, NLC’s national purchasing cooperative. This exclusive contract was awarded through a competitive solicitation process conducted by lead public agency Barron County, Wisconsin and is eligible for use as of March 1, 2014.

Through the new contract, registered users of U.S. Communities will benefit from a full-suite of traffic, parking and safety products and services to help drive efficiencies and make roadways safer.

TAPCO provides over 12,000 discounted products along with custom solutions and services to meet city traffic and safety needs, including: Intelligent Warning System (IWS) - Solar & Wirelessly Activated Products, Parking & ITS Solution, Industrial Traffic and Safety Products, Apparel and Personal Safety - High Visibility items and Accessories, Work Zone Products, Traffic Items and Pavement Marking - Striping Items, Delineators & Markers, Signs and Accessories, Digital Sign Making, Accessories and Equipment, Posts, Poles, Bases and Anchors, and Streetscape Decorative Products.

Additional information on the new traffic control products and solutions contract may be found at www.uscommunities.org/tapco.

The SDML is a sponsor of U.S. Communities.
The Pringle Poachers
Correcting that and other myths about a little town in Shirttail Canyon

Story and Photos By Bernie Hunhoff

West River humorist Archie Gilfillan once said that small towns have more characters because the people are spread out. “Thousands of us hurl ourselves into cities like nuts into a hopper and there, by grinding and rubbing against one another, we lose our natural form and acquire a superficial polish and a more or less standardized appearance,” wrote the Harding County sheepherder and philosopher.

“In the country,” surmised Gilfillan, “the nuts are not subjected to the grinding process,” so they retain their original character.

An afternoon spent in Pringle, population 114, left us wondering whether Gilfillan was patronizing the Hitchrail Bar when he developed his theory. Pringle has characters galore. Some are homegrown, while others happen upon the town and feel at home beneath the granite outcroppings, tall pines and a four-wheeled monument to poachers.

Yes, perched on one of those rocky bluffs in Shirttail Canyon is a convertible with guns attached, Pringle’s answer to Mount Rushmore, according to longtime citizen Bev Morgan.

The Morgans have run a sawmill in Pringle since 1944, cutting logs for cabins and lumber for barns and windbreaks. Nearly everything that happens in town involves a Morgan family member, and Bev admits that one of her grandsons might have had a hand in the poachmobile.

But the matriarch of the Morgan family insists that the boys were provoked. “We have a lot of wildlife around here, and there was a time when there was a lot of poaching. I don’t think it was ever Pringle people doing the poaching. It was probably Custer or Hot Springs or Rapid City people, but we got blamed for it.”

The Pringle men had three options: deny the accusations, do nothing — or capitalize on the rumors. Today you can buy caps, shirts and jackets advertising the Pringle Poachers, and in the autumn you’re welcome to attend the annual poacher’s supper with card games and a surprise menu. If there’s a profit, it’s given to someone in the community who’s having health issues or other bad luck.

The “poachers” welded guns on a convertible and drove it in parades for several years. When the car broke down, they parked it permanently on a hill west of town.

The Morgans’ sawmill and the Hitchrail are the oldest and largest businesses in town. The sawmill dates to 1944 and the Hitchrail opened its doors a few years later. Old-timers tell stories of patrons who played pool on horseback in the bar, and of a pet raccoon that scurried up and down the bar. Trophy elk and deer mounts, all legally bagged by local hunters, hang on the walls along with other Old West memorabilia.

Leonard Wood remembers when Pringle had three churches, three stores, three sawmills and a sand plant. He grew up there, traveled the world while working in the oil business, and then returned to ranch full-time in 2004.

He appreciates his hometown’s hard-work ethic. “Lots of them do some mining in Wyoming or they are railroad people who go to Edgemont or they work the forest service, and a few even go to the North Dakota oil fields. They’re blue collar people who work hard and who like to have fun.”

Wood says the original town in Shirttail Canyon was named Rock, and it’s no mystery why. Granite has been pushing from the ground all around the valley ever since the Black Hills were created two billion years ago. The stones were there when the railroad arrived in 1890. By then the town name had been changed to Point of Rocks. Anna Marie
Pringle welcomed the tired workers with fresh, cold water, and much to her family’s surprise, when the crew built the water tower for the steam engine they printed a new town name, Pringle, on it. She was Leonard’s great-grandmother.

Eight years later, the Pringle Methodist Church was built. Worshippers still gather there on Sunday mornings. Every October the church holds an appreciation dinner for the Pringle Volunteer Fire Department, because when you live in a canyon surrounded by pine trees — in a part of the country that is lucky to get 20 inches of rain a year — you learn to appreciate anyone who knows how to run a pump truck.

Pringle protested the poaching allegations before citizens decided to promote the theme. Several legally-bagged deer and elk mounts are on exhibit at the Hitchrail Restaurant.

Glenda Kline’s Pringle restaurant operates from a 1983 Chevrolet bread truck. With help from Val Williamson (left), she specializes in sandwiches served in homemade waffle cones. A customer favorite is the cordon bleu ham with bacon and Swiss.
Black Hills firemen saved the town just last year when the Myrtle Fire raged for a week in late July, burning 10,000 acres. Two hundred families were evacuated. All the homes were saved but 18 wood buildings on the Williams Ranch, most of which were as old as the town of Pringle, were lost in the blaze. The ranch was maintained as a historic site by the U.S. Forest Service.

Everybody was sad to see the Williams barns burn, but it won’t affect tourism because Pringle — unlike all the mountain towns surrounding it — really hasn’t catered to tourists. The Mickelson Trail parallels Highway 385 through town, and the hikers and bikers might think a Pringle artist greeted them with an abstract sculpture made of bike frames and wheels but they’d be wrong. Dolly Evans, Wood’s sister, says the pile of bikes is actually just her grandson’s collection. He repaired bikes and allowed people to come by for parts. The deal was that if you took a sprocket or a rim, you left another part.

Intentionally or not, depending on who you ask, someone set fire to the pile. Now the bikes are welded together — perhaps to form a more permanent pile — and that’s the closest thing to street art that you’ll find in Pringle.

The lone tourist stop is the Hitchrail, and it has been booming ever since Dennis Boitnott, a skilled Texas chef, bought it three years ago. Boitnott discovered South Dakota after retiring and spending a summer as chef at Sylvan Lake Lodge. He knows he’s in meat-and-potatoes country so Wednesday nights feature a $5 half-pound burger and open mic for musicians, while Thursdays are all-you-can-eat ribs.
But he does vary the cuisine for those who want it; his trout cakes are a treat, and he even creates and sells jars of a Bloody Mary mix, ginger garlic, steak sauces and hot sauces. A sign in the dining room reads, “If you’re in a hurry please come back when you’re not because we make everything from scratch.”

Boitnott strived to cook with local foods while running kitchens for Hyatt and the Ritz Carlton, and does the same at Pringle. He buys Nebraska beef, buffalo from Rapid City and garden produce from Bev Hill, a native of the town who moved back 13 years ago and started a big garden. Because the Southern Hills’ 75-day growing season is too short for most vegetables, she built four hoop houses to extend summer. She grows tomatoes, onions, broccoli, cauliflower, beans and other staples. Whatever she can’t sell to Boitnott or the neighbors is donated to the Storehouse, a food pantry in Custer.

Dining room tables and a big wood bar, burned with brands from local ranchers, fill quickly in the summer months, but there’s enough space to still shoot pool from horseback in the winter. “We stay open because this is the community center,” Boitnott says. “People depend on it. Heck, we take phone calls for the Schwartz boys who do fencing. They come in every day for lunch and coffee and get their messages and go back to work.”

Hang around the Hitchrail and cowboys will tell you stories about the miner who dynamited some hay bales while searching for gold, or about a pioneer named Clark who was famous for chasin’ off his beautiful daughter’s beaus in his nightshirt with a shotgun. That’s supposedly how Shirttail Canyon got its name.

Elk Mountain, elevation 6,150 feet, rises high over the little town to the west. Again, the naming couldn’t be more practical. This is elk and deer country, prime hunting grounds for anyone who has a license or is too hungry to care. The latter folks, we’re told, wouldn’t be Pringle citizens, but regardless they’re more than welcome at the poacher’s supper.

This article is reprinted from the September/October 2013 issue of South Dakota Magazine. For more information visit www.SouthDakotaMagazine.com.
The song we learn in our youth is the song we sing for life. Children often blame others for their mistakes and misdeeds – a desperate effort to shift responsibility and avoid unpleasant consequences. As adults engaging in commerce, we are not much different. It is virtually impossible to find a construction contract which does not contain “indemnification”, “hold harmless”, “additional insured”, and/or “waiver of subrogation” provisions. These risk transfer clauses often seek to hold the subcontractor and its insurers legally accountable for jobsite accidents and injuries which are not the fault of the subcontractor. This finger pointing can unfairly shift the financial responsibility for accidents caused by others to the innocent subcontractor or its insurance company by increasing insurer liability and destroying subrogation potential – both of which raise the cost of insurance and give the owner and/or general contractor a license to act carelessly.

**Indemnity and Hold Harmless Clauses**

He who has the gold makes the rules. Owners and general contractors have been able to insist on indemnity clauses which shift the responsibility to pay damages (often including attorney’s fees and litigation costs) from one party (indemnitee) to another (indemnitor), without regard to who actually caused the loss. An example of such a clause reads as follows:

*Subcontractor shall indemnify and hold harmless the Owner, Architect, General Contractor, and agents and employees of any of them from and against claims, damages, losses and expenses, including, but not limited to, attorneys’ fees, arising out of or resulting from performance of the Work.*

The above language also serves as a “hold harmless” clause by which one or both parties agree to absolve the other party and not hold it responsible for any loss, damage, or legal liability. Such clauses are often woven together and intertwined in contract language.
Anti-Indemnity Statutes

Many states have enacted legislation intended to right this wrong and place the financial responsibility for accidents and injuries on the party responsible for causing them. Forty-five (45) states have enacted anti-indemnity statutes that limit or prohibit enforcing indemnification agreements in construction settings. Anti-indemnity legislation is intended to prevent the party with superior bargaining power (owner/general contractor) from taking advantage of the party with inferior power (subcontractor). Also, some states with anti-indemnity legislation protect only the government by limiting the application of these rules to public projects.

There are three forms of indemnity agreements:

1. **Limited**: Subcontractor assumes only the responsibility for its own negligence – if it is solely at fault. There is no protection if the owner/general contractor is even partially at fault. All states allow limited indemnity provisions.

2. **Intermediate**: Subcontractor assumes responsibility for its own sole negligence or partial negligence. If the owner/general contractor is solely at fault, there is no indemnity. There are two types of intermediate indemnity:
   - (a) **Full Indemnity**: If the subcontractor is partially at fault, he pays all the damages. This allows an owner/general contractor who was 99 percent at fault to receive indemnity from the subcontractor who was only 1 percent at fault.
   - (b) **Partial Indemnity**: Indemnity is on a sliding scale based on the extent of the subcontractor’s negligence. This sets a cap on the amount of indemnity that can be had. If the owner/general contractor is 51 percent at fault it is indemnified only for 49 percent of the total damages.

3. **Broad**: The subcontractor is at fault, regardless of who is at fault, and indemnifies the owner/general contractor for the owner/general contractor’s sole negligence, the subcontractor’s sole negligence, and any joint negligence of the two. The entire risk of loss is transferred to the subcontractor. This is the most onerous of indemnity clauses and the one most targeted by anti-indemnity legislation.

There are many varieties of indemnity clauses and not every state deals with them in the same way. Understanding them and their interaction in a multi-state economy is not always easy. We can start with the simple fact that every state allows limited indemnity agreements. However, that is where the agreement ends.
Broad Indemnity Prohibited
Seventeen (17) states prohibit only broad indemnity where the subcontractor must indemnify another party for its sole fault. They allow intermediate indemnity. These states are Alaska, Arizona, Arkansas, California, Georgia, Hawaii, Idaho, Indiana, Maryland, Massachusetts, Michigan, New Jersey, South Carolina, South Dakota, Tennessee, Virginia and West Virginia. Arizona prohibits broad indemnity in private contracts only. Utah allows such indemnity, but for the owner only. A loss is said to arise from the “sole negligence” of a party if no other party’s negligence contributed to the damage. In these states, indemnity is usually allowed. In these states, the owner/general contractor (indemnitee) can be indemnified even if it is partially at fault.

Intermediate Indemnity Prohibited
Twenty-four (24) states ban intermediate indemnity clauses which require a subcontractor to indemnify another party even for the other party’s partial/concurrent fault and the broad indemnity prohibited by the above sixteen (17) states. These states are California, Colorado, Connecticut, Delaware, Florida (public contracts only), Illinois, Iowa, Kansas, Kentucky, Louisiana (protects prime contractors on public works projects only), Minnesota, Mississippi, Missouri, Montana, New Hampshire, New York, North Carolina, Ohio, Oklahoma, Oregon, Rhode Island, Texas, Utah and Wisconsin.

Broad Indemnity Allowed
Six (6) states (Alabama, Maine, Nevada, North Dakota, Pennsylvania and Vermont) and the District of Columbia allow broad indemnity whereby a subcontractor can be required to indemnify the owner/general contractor even if the owner/general contractor is 100 percent at fault. These states do so either by statute or case law, and some of them require that such indemnity is allowed only if it is “clear and unequivocal.”

The anti-indemnity landscape is quite complicated and incapable of proper treatment in a short article such as this. For this reason, articles such as this appropriately serve only as a starting point for understanding the anti-indemnity law in a particular jurisdiction. For example, even though a broad form indemnity clause, which requires the subcontractor to indemnify an owner/general contractor even for the latter’s sole negligence, is prohibited by law, the question of whether the enforceability of the indemnity provision must wait for a determination by a jury as to whether the owner/general contractor was solely responsible for a loss. Obviously, nobody knows the result until a jury allocates fault. In the meantime, the indemnitee...
will surely have tendered its defense and indemnity obligation to the indemnitor and significant questions regarding the handling of the underlying litigation must be made.

In addition, most of the anti-indemnity statutes apply only to construction contracts, while others have a broader application and apply to additional insured contractual requirements as well.

Additional Insured Clause
Indemnity agreements provide “assurance” not “insurance.” They are only as good as the indemnitor’s ability to make good on its indemnity obligations. Therefore, indemnity clauses are often intertwined with additional insured clauses which require the subcontractor to amend its liability policy to make the owner or general contractor an insured under the policy. An example of such a clause is as follows:

_The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Owner’s lender(s), the Owner’s landlord, the Architect and the Architect’s Consultants as additional insureds for claims caused in whole or in part by the Contractor’s negligent acts or omissions during the Contractor’s operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor’s negligent acts or omissions during the Contractor’s completed operations._

Additional insured clauses in contracts are legally separate and distinct, but are often interwoven with indemnity clauses. The reason for this is that most Comprehensive General Liability (CGL) policies exclude coverage for “bodily injury” or “property damage” for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement.

A subcontractor may be required by contract to purchase insurance which names the owner/general contractor as an “additional insured.” They usually require an additional insured endorsement to the insurance policy of the subcontractor. The additional insured endorsement adds the general contractor and/or owner as an insured under the subcontractor’s policy and extends the benefits of the policy to the additional insured and obligates the subcontractor’s carrier to insure it.

The parties may limit the additional insured requirements (in the contract and/or the insurance policy) to provide coverage only as to the other party’s indemnification obligations and...
not any liability of the additional insured that is beyond the scope of the contractual indemnification. This is usually carefully spelled out in the policy’s additional insured provisions and/or endorsements. However, in some situations, the additional insured contract provisions and the policy provisions can be construed to provide the additional insured/indemnitee with coverage well beyond liability for contractual indemnification, possibly even extending to the sole negligence of the additional insured. A loophole could exist whereby the indemnity is invalid, but the indemnitee still obtains relief as a result of its status as an additional insured under the subcontractor’s liability policy.

Three (3) states (Kansas, Ohio, and Oregon) extend their anti-indemnity prohibition to additional insured requirements as well. Only eleven (11) states currently have legislation that addresses the additional insured loophole by prohibiting owners from requiring additional insured protection from downstream contractors and subcontractors, but the trend is definitely in this direction. These states are Arizona (public work contracts only), California, Colorado, Kansas, Louisiana, Montana, New Mexico, Oklahoma, Oregon, Texas and Utah. Twelve (12) states currently bar additional insured endorsements either by statute or court decision and the count is rising. Some states, such as Arkansas, expressly provide in their statutes to allow policies to name the owner/general contractor as an additional insured under the subcontractor’s policy. Ark. Code § 4-56-104.

Oilfield Anti-Indemnity Statutes

In addition to the general anti-indemnity statutes discussed generally above, four (4) states have enacted oilfield anti-indemnity legislation which specifically addresses the oilfield-services industry. These states are Texas, Louisiana, New Mexico, and Wyoming. Their purpose is to create a level playing field when owners and operators of oil and gas wells enter into a Master Service Agreement (MSA) with contractors providing services and materials on a well or rig. The MSA usually requires the contractor to indemnify the operator and carry a minimum amount of insurance which names the operator as an additional insured. These oilfield anti-indemnity statutes generally prohibit an MSA from requiring the contractor to indemnify the operator against its sole or concurrent negligence. Wyoming and New Mexico do not prohibit an operator from seeking indemnity from the contractor for the contractor’s percentage of negligence resulting in a claim or loss. Louisiana, however, provides that any negligence on the part of the operator invalidates that party’s right to any indemnity, even to the extent of the

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other party’s concurrent negligence. These oilfield anti-indemnity statutes differ when it comes to invalidating insurance coverage of indemnity liability.

**Summary**

The existence of anti-indemnity statutes can have a dramatic effect on not only a subcontractor’s liability, but also its insurers’ liability and/or subrogation potential. Whether you are a liability carrier looking to limit liability for a construction site accident or a workers’ compensation carrier interested in subrogating against another party to a construction contract, it is important to obtain copies of all contracts and policies immediately after a loss in order to evaluate your options.

Indemnity clauses, hold harmless language, additional insured requirements, and waiver of subrogation agreements must be understood and addressed by liability claims professionals and subrogation professionals in order to make informed decisions on the appropriate claims strategy and recovery options available to them. A great starting point to assist insurance professionals and lawyers in understanding indemnity clause enforcement issues and navigating the anti-indemnity minefield is a chart detailing the anti-indemnity and additional insured legislation in all 50 states which can be found on the Matthiesen, Wickert & Lehrer, S.C. website at http://www.mwl-law.com/wp-content/uploads/2013/03/Anti-Indemnity-Statutes-In-All-50-States-00131938.pdf.

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How to Avoid an Uncovered or Undercovered Property or Vehicle Loss

One of the best ways to be sure that you have all of your property covered is to take an annual inventory. Many times, insurance policies are renewed “as is.” This can and has led to uncovered losses. A department may add a vehicle, piece of equipment or even a building without notifying the proper individuals. Additions to buildings can also increase valuations and may “slip through the cracks.” Recently, a South Dakota city of less than 5,000 had a loss with a vehicle that had not been listed on their coverage. This city “found” seven vehicles that had not previously been listed on their inventories!

Some items, such as playground equipment, dugouts, picnic shelters, etc., may have been donated to the city. Because they didn’t cost the city anything, they are not added to city inventories and are left off the insurance coverage.

Other items, such as fire hydrants, light poles, traffic signals are often overlooked. If you wish to cover these items, you need an inventory and value of the item(s) to cover. While fire hydrants may appear to be indestructible, it only takes one hit and run driver to create an uncovered loss.

To avoid having items inadvertently uninsured, we recommend a physical inventory be completed annually on all vehicles, equipment and buildings owned by the city. This should then be verified against your insurance schedules. A decision should be made on whether or not there are items that you wish to self-insure, such as low-valued, older equipment, or equipment valued below a dollar amount set by your governing council.

Another important area to consider is if the value of your property is adequate. What value should be placed on buildings, contents, equipment? First, you need to determine what type of coverage you want on these items. You can cover them for Replacement Cost (RC), Actual Cash Value (ACV) and in special circumstances, Functional Replacement Cost (FRC).

**Replacement Cost** – Cost to repair or replace new with like kind and quality. There is no deduction for depreciation.

**Actual Cash Value** – Cost to repair or replace with like kind and quality LESS DEPRECIATION.

**Functional Replacement Cost** – This is useful for covering buildings that are no longer used for the original intention when they were built. For example, a large two or three story school house that has been turned over to the city and is being used as a community center. Only a portion of the building may be used and if the building was destroyed, it would be rebuilt as a single story, much smaller building. A value is determined as to what it would cost to build a building the type and size of what the current function is.

Most insurers require 80-90% of the current replacement cost of a building to insure for Replacement Cost Coverage. Equipment, such as mowers, graders, etc., are written at Actual Cash Value.

A common misconception is that the value should be the value on your accounting records or “book” value. Accounting or “book” value has no relevance in determining the current replacement cost or actual cash value of an item. Due to accelerated depreciation, the “book” value may be substantially lower than the current value of an item and could result in a very inadequate loss settlement.

Another misconception is that a building should be valued at the market value of the building. In many of our rural communities, the market value of a building can be substantially less than the cost to repair or rebuild a building.

So the question becomes: **how do we estimate insurable value?**

If a building or piece of equipment is new, the original cost is appropriate. Value should include cost of materials, labor, architects and engineers fees. Land value should not be included.

If the building is not new or the piece of equipment is used, the acquisition cost reflects the current market value, not necessarily the cost to repair or replace. In some areas that have a depressed economy, the acquisition value may be considerably lower than the cost to repair or replace. This is especially true when governmental entities sell a building to another governmental entity for $1.

An ideal method to accurately determine the insurable value is to hire a professional appraiser. The appraiser
should use the cost approach, not the current market value approach to appraise the buildings in order to determine the insurable value.

Most insurance companies will use a square footage multiplier. This is a **rough** estimate of the value of a building based on the square footage, construction and occupancy of a building. These types of estimates are useful for an average building, they may not be adequate for elaborate buildings. The only accurate method is to obtain an appraiser if you are in doubt.

**How do we avoid an underinsured/uninsured loss?**

1. Review and update the Statement of Values your insurer or agent provides at renewal or other times of the year. Include square footage, construction (frame, joisted masonry, non-combustible, etc.) on all your covered buildings.
2. Keep current, up-to-date inventories of all vehicles, equipment and buildings.
3. Review values of buildings, contents and equipment annually.
4. Consider using an inflation guard endorsement on your property. This automatically increases buildings and/or contents by the percentage you choose.
5. Notify your insurer or agent of any changes immediately. This includes, but is not limited to, the purchase of vehicles or equipment, contents or buildings, additions to your buildings and property that is turned over to you, acquired by tax liens or gifted to you.

By following these simple rules, you can avoid most uncovered losses.

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Now is crunch time. With college graduations beginning in the next few weeks, students across the country are working to secure their summer internships or find their first full-time jobs. For thousands across the country, however, payments will need to be made on their student loans long before their first paycheck comes in the door.

The unemployment rate for recent college graduates is at its highest point in twenty years, according to a study by the New York Fed that was released in January 2014. Their underemployment rate, which includes graduates that aren’t working as many hours as they’d like or who don’t have a job in the field of their choice, is also the highest in decades, meaning they aren’t getting to use the expensive degrees for which they now must begin paying loans on.

Unemployment and underemployment among recent college graduates has long-lasting economic consequences. For the next 10 to 15 years, these graduates will earn less than those who earned their degrees during a strong economy. And many will end up delaying major milestones, like getting married, owning a home or having children.

Fortunately, the picture looks different for South Dakotans. The unemployment rate for recent college graduates in South Dakota is 9.8 percent, compared to 16.2 percent nationwide. That’s a pretty stark difference.

The difference is due, at least in part, to the pro-business climate that South Dakota has built, which has attracted jobs while other states continue to lose them. The Tax Foundation found that South Dakota has one of the country’s best business tax climates in the country for 2014. We come in second behind our neighbor Wyoming.

We do not have a corporate income tax or a personal income tax. That means it’s not just affordable to do business here, it’s affordable to be a resident too. The state has also made it more affordable to get loans for start-up businesses and has put an emphasis on training, so businesses know when they come to South Dakota they’ll have access to one of the best, well-trained workforces in the country.

Recent college graduates aren’t the only beneficiaries when our business climate improves. South Dakota’s unemployment rate overall is the third lowest in the country at 3.7 percent.

A government – state or federal – isn’t responsible for creating the jobs necessary to put people to work. But it is responsible for creating an environment where job creation can happen. South Dakota has done just that – and then the state government got out of the way.

I had the opportunity to serve in our state legislature for four years. During that time, we maintained and improved South Dakota’s business climate. We set ourselves up to withstand the recession in a way most states did not. And every day I went to work in the state capital, I knew we were making the state government work for the taxpayers, not taxpayers work for the state government.

These are ideas and principles I bring to the U.S. Capitol every day. What South Dakota is doing works and it should be replicated on a larger scale.

Getting your first job is tough. With one of my daughters in college now and another beginning to visit campuses, I understand just how important it is that we get our economy working again. It’s not just about them finding a job by Graduation Day or getting them to a place where they can move out of their childhood bedrooms. It’s about setting our kids up for success – for the rest of their lives.
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the shape of solutions

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Fax: 605-718-0808

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Westers SD Sales
Cell: 605-209-0979
Fax: 605-718-0808

Dan Bjerke, PE
Bridges and Box Culverts
Cell: 605-381-0493
Fax: 605-718-0808

www.cretexconcreteproducts.com
JULY Community Events

**July 1**
Trolley on the Trail
Deadwood

Special Exhibit: The Early Years
Unveiling New Work
Watertown

**July 2 - July 4**
Sitting Bull Stampede Rodeo
Mobridge

**July 3**
Thursday Nite Live
Outdoor Concert Series
Watertown

Summer Lecture Series
Crazy Horse

Lake Norden Community Barbeque
Lake Norden

Summer Porch at Strawbale Winery
Renner

Summer Concert Series at
Main Street Square
Rapid City

**July 3 - July 4**
4th of July Parade, Rodeo & Fireworks
Fort Pierre

**July 3 - July 5**
Old Time Country 4th Celebration
Custer

Old Time Country Fair 1881
Courthouse Museum
Custer

**July 3 - July 6**
Wild West Days
Faulkton

95th Annual Black Hills Round Up
Belle Fourche

**July 4**
4th of July Fireworks Display at
Lake Mitchell
Mitchell

Independence Day Celebration at
Main Street Square
Rapid City

4th of July Parade & Celebration
Watertown

Independence Day Celebration
Lake Norden

4th of July Parade & Fireworks
Wessington Springs

Independence Day at
Crazy Horse Memorial
Crazy Horse

July 4 Celebration
Menno

4th of July Rib Cook-off
De Smet

Royal River Casino & Hotel
Fireworks Show
Flandreau

Wylie Park 4th of July Celebration
Aberdeen

Uncle Sam Jam
Brookings

4th of July Parade
Brookings

Patriots Parade & 4th of July Fireworks
Custer

4th of July Fireworks Celebration
Yankton

Hot Springs 4th of July Events
Hot Springs

Big & Rich in Concert
Deadwood

Independence Day Bike Parade
Brandon

Independence Day Bike Parade
Madison

Uncle Sam’s Bike Parade
Canistota

Glow Bug 4th of July Parade
Garretson

Independence Day Bike Parade
Madison

Independence Day Bike Parade
Madison

July 4 - July 5
Lake City Centennial
Lake City

July 4 - July 6
Dakota Running Irons (Cowboy Mounted Shooters)
Wessington Springs

Patriotic Campsite Decorating Display
Bruce

Sisseton Wahpeton Oyate
147th Annual Wacipi
Agency Village

Patriotic Campsite Decorating Display
Arlington

Patriotic Campsite Decorating Display
Lake Preston

**July 5**
Patriotic Bike Parade
Arlington

Firefly Fiesta Hike
Yankton

Red, White & Blue Bike Parade
Yankton

Dash for the Cache GPS Tournament
Yankton

Extreme Amazing Race
Canton

Independence Day Parade
Canton

Extreme Campers Challenge
Garretson

Fireman’s Street Dance
Wessington Springs

“You Should See The Stars From Here’ Concert
Custer

Blue & Gold Golf Tournament
Wessington Springs

Celebrate Freedom Live Music
at Prairie Berry Winery
Hill City

**July 5 - July 6**
Archeology Awareness Days
Mitchell

**July 5 - July 7**
Rosebud Casino 4th of July Pow Wow
Mission

**July 6**
Sangria Sunday at Strawbale Winery
Renner

The Avett Brothers in Concert
Deadwood

SOUTH DAKOTA MUNICIPALITIES
JULY Community Events

HOT ROD Tour Vintage Cars Racing
Watertown

July 9
Thompson Square
Deadwood

Nature Day Camp: Track Detectives
Hot Springs

Trolley on the Trail
Hill City

July 10
Nature Day Camp: Fish
Garretson

Thursday Nite Live Outdoor Concert Series
Watertown

Summer Porch at Strawbale Winery
Renner

Summer Concert Series at Main Street Square
Rapid City

Summer Lecture Series
Crazy Horse

July 10 - July 12
Antique Tractor Ride
Yankton

July 10 - July 13
Lemmon Boss Cowman Days
Lemmon

Family Fun Days
Grenville

Hot Harley Nights
Sioux Falls

July 11
Art Walk
Rapid City

Terry Redlin Birthday Bash Celebration
Watertown

July 11 - July 13
Laura Ingalls Wilder Pageant
De Smet

July 12
Fireman Appreciation Day
Big Stone City

The Rapid Pursuit
Rapid City

CASA Spearfish Canyon Half Marathon & 5K Spearfish

Tour de Cure South Dakota Sioux Falls

Dutch Oven Gathering Brandon

Family Sand Volleyball Tournament Lake Preston

Parrot Program Canton

Outdoor Cooking from A to Z Fort Pierre

Bean Bag Game Tourney Bruce

Heart of the Hills Parade & Logging Show Hill City

July 12 - July 13
Eastern Dakota 4-H Rodeo Watertown

43rd Annual Brookings Summer Arts Festival Brookings

Railroad Days at Historic Prairie Village Madison

July 12 - July 14
Antelope Community Pow Wow Antelope

July 13
Sangria Sunday at Strawbale Winery Renner

Cruiser Car Show (DRC) Rapid City

Watertown City Band Outdoor Concert Watertown

Wissota Races Watertown

July 16
Nature Day Camp: Nature Explorers Belle Fourche

Hot Summer Nites Sioux Falls

July 17
Summer Porch at Strawbale Winery Renner

Summer Concert Series at Main Street Square Rapid City

Summer Lecture Series Crazy Horse

Nature Day Camp: Fish Brandon

Thursday Nite Live Outdoor Concert Series Watertown

July 17 - July 19
Sioux Falls Jazz and Blues JazzFest Sioux Falls

July 17 - July 20
44th Annual Corn Palace Stampede Rodeo Mitchell

July 18
2nd Annual Art in the Park Eagle Butte

July 18 - July 19
Cookin’ on Kampska Watertown

July 18 - July 20
Spearfish Festival in the Park Spearfish

Halloween in July Bruce

Traditional Mdewakanton Wacipi Flandreau

Laura Ingalls Wilder Pageant De Smet

Hills Alive Festival Rapid City

Iroquois Sports Day Iroquois

Aberdeen ABATE WHEEL INN Pierpont

July 19
James Valley Model Railroad Open House Aberdeen

JUNE 2014
**JULY Community Events**

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701-283-3109

Grand Forks, ND 58201
1201 S. 46th St.
701-775-4238

Hankinson, ND 58041
17040 Hwy 11
701-232-2424

Hoople, ND 58243
7695 Hwy 18 S
701-894-6863

Huron, SD 57350
1715 US Hwy 14 W
605-353-1200

Jamestown, ND 58401
1910 27th Ave. SE
701-251-1409

Minot, ND 58701
1505 Hwy 2, Bypass E
701-852-3580

Devils Lake, ND 58301
7910 Highway 2 W
701-655-3500

Aberdeen, SD 57401
4550 E Hwy 12
605-225-6210

Pierre, SD 57501
891 N. Garfield Ave.
605-224-5400

Rapid City, SD 57702
3901 Deadwood Ave.
605-342-4850

Sioux Falls, SD 57107
3201 N. Louise Ave.
605-338-3010

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JUNE 2014
CLASSIFIED ADS POLICY: Email ads to carrie@sdmunicipalleague.org or fax to 605-224-8655. The next deadline is June 16 for the July 2014 issue.


WATER TREATMENT PLANT FOREMAN: Watertown Municipal Utilities has a full-time opening for a Water Treatment Plant Foreman. Reporting to the Water Superintendent, this position is responsible for the technical and supervisory work in the direction of the municipal water treatment plant and related facilities. SD Water Treatment Class III Certification and two years supervisory experience required. Salary commensurate with experience and qualifications. Excellent benefits package, including pension, health insurance, life insurance, 457 plan, paid sick leave and vacation. A completed application and resume, including salary history, references and a cover letter, are required. Wage range of $26.94 - $30.72. Job description and application are available at: Watertown Municipal Utilities, Attn: Human Resources, 901 – 4th Avenue SW, Watertown, SD 57201. E-mail: hr@watertownmu.com. Application and job description online at www.watertownmu.com. Open until filled. EOE.

POLICE OFFICER: City of Lennox, SD is accepting applications for a full-time certified police officer and a part-time certified police officer. Qualifications: a High School diploma/GED certificate, state law enforcement academy certification. Apply at City Hall, 107 South Main Street, Lennox, at http://www.cityoflennoxsd.com, or call 605-647-2286 for application. EOE.

POLICE OFFICER: Freeman, SD. Part-time position. Reports directly to the Police Chief. High school diploma or GED required. Certified officer is preferred. Salary is dependent on qualifications and experience. Application and job description can be picked up at Freeman City Hall, 185 E 3rd St, Freeman, SD or call 605-925-7127. Send completed applications to Carroll Vizecky, City Administrator, PO Box 178, Freeman, SD 57029. Open until filled.

WATER/WASTEWATER SUPERINTENDENT: City of Gregory, SD. Responsible for water/wastewater day to day operations. Will be required to become SD certified in water and wastewater. Must have a valid driver’s license and obtain a CDL driver’s license. For more information and application, call Finance Officer at 605-835-8270, PO Box 436, Gregory, SD 57533 or visit cityofgregory.com. Open until filled. EOE.


FOR SALE: The City of Eureka is asking for sealed bids for a 2006 MC 28 New Holland Mower 72” Mower Deck CM 306 that was declared surplus property. Bids will be received by the City of Eureka at the Finance office until 7:30 p.m., July 14, 2014. Bids will be opened, read aloud and the top three bidders will have the opportunity to raise their bids at that time. If interested call the City Office at 605-284-2441.

FOR SALE: Elgin White Wing Street Sweeper 345 ci International truck engine, self-propelled with curb brush, $2,500. Rosco pull-behind 7 1/2’ Street Sweeper new brushes in 2013, newer 4 cyl., air-cooled Wisconsin type motor (50 hrs), $2,000. Both are as is, where is. Contact the City of Wilmot at 605-938-4811.

State Surplus Heavy Equipment for Sale

The State of South Dakota will be offering a ‘Pre-Sale’ opportunity of equipment and items to eligible City, County, Township and Tribal Governments from June 17 through July 3, 2014.

After the presale has concluded, the equipment will no longer be available for purchase until public auction week: September 8-12, 2014. No exceptions.

NOTE: Be certain to check availability date of equipment.

Registration to the State Surplus Property website is required for the ability to purchase. A login ID and password will be required for the ability to purchase from the site. If you haven’t registered, please do so at www.sdsurplusproperty.com and click on “Registration.”

Please contact the SD Property Management office with any questions:
SD Property Management
1320 E. Sioux Ave., Pierre, SD 57501
605-773-4935 or surplus.property@state.sd.us
form of government, at the first regular meeting in the month following the annual election, the commissioners must elect one of their members to serve as mayor for a term of one year. (SDCL 9-10-6; See Hdbk., sec. 2.615)

**Tax levy** – The governing body of the municipality may impose an excess tax levy with an affirmative two-thirds vote of the governing body on or before July fifteenth of the year prior to the year the taxes are payable. The decision to increase taxes must be published within 10 days of the decision (certain publication size restrictions apply), and may be referred upon a petition signed by at least five percent of the registered voters in the municipality and filed within twenty days of publication of the decision. The referendum election shall be held on or before October first preceding the year the taxes are payable. (SDCL 10-13-36; See Hdbk., sec. 12.170)

**By June 30** – Applications for renewal of licenses for the sale of malt beverages should be filed before the expiration of June 30. (SDCL 35-4-2.5; See Hdbk., sec. 11.465)

**By June 30** – All mechanical or electronic amusement devices must be registered. The secretary of revenue shall distribute the registration fee to the municipality in which the device is located. (SDCL 10-58-3 and 10-58-5; See Hdbk., sec. 12.255(7))

**No later than July 1** – Each municipal governing body shall provide to the Department of Public Safety, Division of Emergency Management, information that will enable emergency agencies to reach the members of the municipal governing board and the mayor at any time, day or night. The information necessary shall include home, business, and other personal telephone numbers including any facsimile transmission machines and cellular or mobile telephone numbers; home, business, and other personal addresses; employer’s name and telephone number; and home, business, and other personal email or internet addresses. In addition, each municipal governing body shall provide contact information for emergency agencies.

---

**June elections** – Follow the Municipal Election Calendar for all election deadlines.

**Third Tuesday in June** – A municipality may combine its election with a school district and hold the election on the third Tuesday in June. (SDCL 9-13-1.1; See Hdbk., sec. 7.050)

**First meeting following election** – Except as otherwise provided, every officer of the municipality will begin to discharge his duties on the first meeting of the month next succeeding the election, or as soon as the officer has qualified. (SDCL 9-14-5; See Hdbk., sec. 5.115)

**First meeting following election** – Appointed municipal officials are usually appointed. The appointment may be annual, or for an interval determined by the governing body. (SDCL 9-14-3)

**First meeting following election** – In municipalities having the mayor and common council form of government, the council must elect a president and vice-president for the ensuing year. (SDCL 9-8-7; See Hdbk., sec. 2.520)

**First meeting following the election** – In municipalities governed by a mayor and four commissioners, the board must designate by a majority vote, the following commissioners: Public Safety, Public Works, Utilities, and Finance and Revenue. Commissioners are assigned areas of responsibility under the law. (SDCL 9-9-18 to 9-9-24; See Hdbk., sec. 2.590)

**First meeting following the election** – In municipalities governed by a mayor and two commissioners, the board shall by a resolution adopted by a majority, at the first meeting following the annual election, assign and apportion between the members, all duties that are not assigned to the mayor. (SDCL 9-9-27; See Hdbk., sec. 2.595)

**First meeting following election** – In those municipalities employing a city manager and under the commissioner form of government, at the first regular meeting in the month following the annual election, the commissioners must elect one of their members to serve as mayor for a term of one year. (SDCL 9-10-6; See Hdbk., sec. 2.615)
information for the municipal employees responsible for the following functions if the municipality employs a person in such a capacity: City administrator or city manager; Building inspection; Engineering; Electrical; Fire; Police and law enforcement; Public works; Streets and highways; Sewer and waste water; Water; Telephone; Utilities; Emergency services or civil defense; Coroner; and 911 coordinator. (SDCL 33-15-11.1; 33-15-11.2; See Hdbk., sec. 9.400)

**July**

**July 1** – The effective date of any new or amended municipal sales tax ordinance. The municipality must notify the Department of Revenue of the ordinance at least 90 days prior to the effective date. (SDCL 10-52-9; 10-52A-13; See Hdbk., sec. 12.260)

No later than **July 1** – Each municipal governing body shall provide to the Department of Public Safety, Division of Emergency Management, information that will enable emergency agencies to reach the members of the municipal governing board and the mayor at any time, day or night. The information necessary shall include home, business, and other personal telephone numbers including any facsimile transmission machines and cellular or mobile telephone numbers; home, business, and other personal addresses; employer’s name and telephone number; and home, business, and other personal email or internet addresses. In addition, each municipal governing body shall provide contact information for the municipal employees responsible for the following functions if the municipality employs a person in such a capacity: City administrator or city manager; Building inspection; Engineering; Electrical; Fire; Police and law enforcement; Public works; Streets and highways; Sewer and waste water; Water; Telephone; Utilities; Emergency services or civil defense; Coroner; and 911 coordinator. (SDCL 33-15-11.1; 33-15-11.2; See Hdbk., sec. 9.400)

**July 4** – Independence Day – State holiday (SDCL 1-5-1)

**First meeting following election** – Except as otherwise provided, every officer of the municipality will begin to discharge his duties on the first meeting of the month next succeeding the election, or as soon as the officer has qualified. (SDCL 9-14-5; See Hdbk., sec. 5.115)

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**First meeting following election** – In municipalities governed by a mayor and two commissioners, the board shall by a resolution adopted by a majority, assign and apportion between the members, all duties that are not assigned to the mayor. (SDCL 9-9-27; See Hdbk., sec. 2.595)

**First meeting following election** – In those municipalities employing a city manager and under the commissioner form of government, at the first regular meeting in the month following the annual election, the commissioners must elect one of their members to serve as mayor for a term of one year. (SDCL 9-10-6; See Hdbk., sec. 2.615)

On or before **July 15** – The governing body of the municipality may impose an excess tax levy with an affirmative two-thirds vote of the governing body on or before July fifteenth of the year prior to the year the taxes are payable. The decision to increase taxes must be published within 10 days of the decision, (certain publication size restrictions apply), and may be referred upon a resolution of the governing body of the municipality or by a petition signed by at least five percent of the registered voters in the municipality and filed within twenty days of publication of the decision. The referendum election shall be held on or before October first preceding the year the taxes are payable. (SDCL 10-13-36; See Hdbk., sec. 12.170)

By **July 15** – The secretary of revenue shall apportion the money in the local government highway and bridge fund. (SDCL 32-11-35; See Hdbk., sec. 12.255(6))

**Boundary changes** – Municipalities must notify the Department of Revenue of any resolution or amendment enacted which changes the boundaries of the municipality. Notification shall be in written form, shall contain a copy of the resolution or amendment, and may be sent by electronic means or registered mail. Municipalities shall also provide any changes and additions to streets and addresses. (SDCL 10-52-13; See Hdbk., sec. 14.172)

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