

6. Time is of the essence as construction costs and interest rates are time sensitive and any delay could cause a substantial increase in the cost of the PSC.
7. Lincoln County reserves the right to add further affirmative defenses that may become known if Mr. Tuntland responds to what is addressed herein.
8. A ruling from this Court would eliminate the uncertainty about the ability to challenge the resolution and the validity of Mr. Tuntland's claims pursuant to SDCL 21-24-1.

FACTS

9. Lincoln County does not have a jail and has not operated a jail since the late 1980's.
10. Lincoln County has contracted with Minnehaha County to house its inmates.
11. The Minnehaha County jail reached its capacity for inmates when the Work Release facility was damaged in a fire, at which time Lincoln County was forced to utilize other jails to house its prisoners.
12. During the period Minnehaha County did not have the ability to house Lincoln County inmates, Lincoln County used nine different jails in three states to house its inmates. This increased the cost to the County in travel, complicated the logistics, and increased the cost to the Court Appointed Attorneys for additional travel. The travel also increased the security risk for transport of the inmates.
13. Lincoln County was able to again contract with Minnehaha County for five years guaranteeing forty-five beds for Lincoln County inmates. The Counties entered into this contract on October 1, 2019 and it is set to expire on October 1, 2024. Attached as Exhibit 2.
14. The cost of housing inmates under the contract is over two million dollars (\$2,000,000.00) in the year 2020. This cost is estimated to grow to eight million dollars (\$8,000,000.00) in ten years. Attached as Exhibit 3.
15. Over the course of the last year, Lincoln County Commissioners have conducted studies and analyses to assist in the decisions on the issue of a PSC during their public meetings. Attached as Exhibit 4.
16. The Lincoln County Sheriff provided information to the Commissioners on current and future inmate numbers, cost analyses and bonding options. Attached as Exhibit 4.

17. The Lincoln County Sheriff visited both in and out-of-state Public Safety Centers and reported his findings and conclusions to the Commission during public meetings. Attached as Exhibit 5.
18. The bonding company and the Lincoln County Auditor had discussed different avenues of how to finance the PSC during public meetings. Attached as Exhibit 5.
19. The powers exercised by the County Commission under SDCL 7-25-19 are subject only to such restrictions as may be provided by the South Dakota Constitution and are not subject to any restrictions or procedural requirements prescribed by any other law pursuant to SDCL 7-25-20.
20. On February 14, 2020, the Lincoln County Commission Agenda included a Motion to Bond for a PSC and was published on the courthouse door and on the Lincoln County website for the February 18, 2020, Commission meeting. At this meeting, the Commission discussed the financing options for the PCS for a second time. Attached as Exhibit 6.
21. The bonding company, bond counsel, Lincoln County Auditor, and Lincoln County Sheriff were all present during the discussion of options to finance the PSC.
22. Commissioner Schmidt made a motion that was seconded by Commissioner Landeen. The final vote was 3-2 for the motion to pass a resolution granting authority to enter into a lease purchase agreement pursuant to SDCL 7-25-19 and 20.
23. The resolution was published in the Sioux Valley News, Lennox Independent and Beresford Republic on February 27, 2020, and the Tea Paper on February 28, 2020. These newspapers are legal newspapers for Lincoln County. Attached as Exhibit 7.
24. The last published date of the resolution was February 28, 2020. Twenty days (20) from that date was March 19, 2020.
25. Lincoln County scheduled five public meetings after the February 18, 2020 vote.
 - a. March 9, 2020 at the Tea City Hall, 600 East 1st St, Tea;
 - b. March 10, 2020 at the Harrisburg Liberty Elementary School Board Room, Entrance F, 200 E Willow Street, Harrisburg;
 - c. March 12, 2020 at the Lincoln County Commission Meeting Room, 104 N Main, Canton;
 - d. March 17, 2020 at the Lincoln County Fairgrounds 27711 Highway 17, Lennox;

e. March 24, Hudson Community Center, 200 Harris St, Hudson;

The first three of these meetings were held with two being cancelled due to the COVID-19 virus. Four of the meetings were scheduled prior to March 19, 2020 and the fifth one was scheduled after the deadline. The Lincoln County Sheriff, Lincoln County Auditor and the Lincoln County Commissioners were present to answers questions. Attached as Exhibit 8.

26. Mr. Tuntland attended the public meeting in Canton concerning the PSC.

27. Media outlets published stories regarding Lincoln County authorizing a fifty-million-dollar (\$50,000,000.00) bond for a PSC prior to March 19, 2020. Attached as Exhibit 9.

28. To the present day, no petitions have been filed with the Lincoln County Auditor to refer the resolution passed by the Lincoln County Commission on the PSC.

29. Further, no complaints have been filed with the Second Circuit challenging the County's resolution.

30. Mr. Tuntland's out-of-state attorney sent letters after March 19, 2020 to the County Commission demanding the February 18, 2020 vote be rescinded for a variety of reasons.

31. The letters from Mr. Tuntland imply potential litigation over the Commissioners' votes. This would require Lincoln County to disclose the potential litigation issue during the bond issuance. This may increase the cost or prohibit the bonds from being sold.

32. Any delay in the bond issuance would prevent the County from having a working PSC prior to its contract expiring with Minnehaha County to house its inmates.

33. There are no guarantees that Minnehaha County will have the capacity to house Lincoln County inmates after the expiration of the current contract.

34. The cost of housing inmates in a non-Lincoln County PSC facility over the next ten years is shown to be cost prohibitive. Attached as Exhibit 2.

ISSUE ONE

35. Mr. Tuntland's letters fail to state any claim upon which relief may be granted and if he filed a complaint it would be ripe for a motion to dismiss under SDCL 15-6-12(b) and a declaratory ruling in the County's favor.

36. Our Court has stated there is a “requirement of strict compliance with the service provisions of SDCL 7–8–29 and its recognition that lack of strict compliance deprives the circuit court of subject matter jurisdiction. See *Schrank, 1998 S.D. 108, ¶ 10, 584 N.W.2d at 681*; see *Upell v. Dewey County Com’n, 880 N.W.2d 69 (2016)*.
37. SDCL 7-8-29 provides as follows:

Such appeal shall be taken within twenty days after the publication of the decision of the board by serving a written notice on one of the members of the board, when the appeal is taken by any person aggrieved by the decision of the board, and upon the person or persons affected by the decision of the board when the appeal is taken by the state's attorney; and the county auditor shall upon the filing of the required bond and the payment of his fees, which shall be the same as allowed registers of deeds for like services, make out a complete transcript of the proceedings of the board relating to the matter of its decision and deliver the same to the clerk of courts.
38. Resolution No. 2002-27 was published with the last date of publication being February 28, 2020. The public had the opportunity to circulate a petition within twenty days to place the resolution on the ballot for public vote. See SDCL 7-18A-8. This petition process was discussed in the public meeting held after the Commissioners’ bond decision. The twenty-days expired on March 19, 2020 at 5:00 PM. Further, there is a twenty-day period within which to challenge county commission decisions in Circuit Court. See SDCL 7-8-29.
39. Mr. Tuntland had constructive knowledge with the posting of the agenda, media reports and publication of Resolution No. 2002-27.
40. Mr. Tuntland had actual knowledge from appearing at the public informational meetings on March 12, 2020 and requesting information on the resolution from the Lincoln County Auditor’s Office on March 17, 2020 prior to the March 19, 2020 deadline.
41. The time for petitioning for a public vote or appealing Resolution No. 2002-27 has expired, and no challenge has been filed to date.
42. Lincoln County is entitled to a ruling from this Court that the time to challenge the validity of Resolution No. 2002-27 has expired.

ISSUE TWO

43. Mr. Tuntland's letters fail to state any claim upon which relief may be granted and if he filed a complaint it would be ripe for a motion to dismiss under SDCL 15-6-12(b) and a declaratory ruling in the County's favor.
44. In Mr. Tuntland's first letter he claims the notice in the agenda was insufficient by state "Consider a *motion to bond* for a public safety center," and that a pre-drafted resolution was not present, depriving the public and commission of adequate notice.
45. The agenda was published in accordance with SDCL 1-25 in advance of the meeting. The terms and conditions of the resolution were set by the Commissioners at the meeting.
46. The Motion was passed only after discussion by the Commissioners in open session and in accordance with SDCL 7-25-19 and 7-25-20.
47. No additional information could have been provided in the notice due to the terms and conditions of the resolution being set at the meeting.
48. The Commissioners discussed acting under SDCL 7-25-1 or 7-21-16.1 but rejected those approaches and chose to proceed under SDCL 7-25-19 and 7-25-20 and set the dollar amount authorized for the PSC.
49. The required procedures are set out in SDCL 7-25-20 stating:

The powers conferred by § 7-25-19 are in addition to all other powers conferred upon the board of county commissioners of any county, and their exercise shall be subject only to such *restrictions as may be provided by the South Dakota Constitution and are not subject to any restrictions or procedural requirements prescribed by any other law.* (Emphasis added)
50. Lincoln County is entitled to a ruling from this Court that proper notice and procedures were followed in proposing and passing Resolution No. 2002-27, and that the time to challenge the validity of Resolution No. 2002-27 has expired.

ISSUE THREE

51. Mr. Tuntland's second letter fails to state any claim upon which relief may be granted and if he filed a complaint it would be ripe for a motion to dismiss under SDCL 15-6-12(b) and a declaratory ruling in the County's favor.
52. Mr. Tuntland's second letter alleges that the Commissioners failed to comply with SDCL 7-21-16.1 and did not have more than a sixty-percent vote.

53. Since the Commissioners acted under SDCL 7-25-19 and 7-25-20, a majority vote was all that was needed to pass the motion.
54. Also, SDCL 7-25-20 excludes any other statutes or rules when proceeding under SDCL 7-25-20: “.... *are not subject to any restrictions or procedural requirements prescribed by any other law.*”
55. Mr. Tuntland is claiming additional requirements are placed on the Commission by SDCL 7-21-16.1.
56. This is contradictive of the plain reading of the statute. See SDCL 7-25-20.
57. Lincoln County is entitled to a ruling from this Court that proper notice and procedures were followed in proposing and passing Resolution No. 2002-27, and that the time to challenge the validity of Resolution No. 2002-27 has expired.

CLAIM FOR RELIEF

Lincoln County is entitled to a ruling from this Court under SDCL 21-24 that the time to challenge Resolution No. 2002-27 has expired on all issues and any such challenge is barred from being raised in a Circuit Court of South Dakota. In the alternative, that Resolution No. 2002-27 was properly noticed, correct procedures were followed and any other relief the County is entitled to, including costs and attorney fees if the Defendant answers the declaratory relief complaint.

Dated this 22nd day of April, 2020.



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