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June 16, 2026

VIA E-MAIL (applespringsdistricts@gmail.com)
Apple Springs Water Works Sanitary District
Attn: Board of Trustees
12257 Stagecoach Trail
Sturgis, SD 57785

RE: Sanitary District Board Vacancy, Dissolution, and Trustee Compensation

Dear Apple Springs Water Works Sanitary District Board of Trustees:

Lynn Jackson has been asked to provide its opinion regarding several governance and statutory compliance issues facing the Apple Springs Sanitary District ("District"), including (1) whether the Board of Trustees ("Board") may continue operating with only two members following a vacancy, (2) the process for potential dissolution of the District, and (3) permissible compensation for Board trustees under South Dakota law.

This opinion is based solely on the facts and information provided to us to date and our interpretation of applicable South Dakota statutes and relevant legal authority. It is intended solely for the use and benefit of the District Board and may not be relied upon by any other person or entity without our prior written consent.

Based on our review, our opinion is set forth below.

ISSUE ONE: Sanitary District Board Requirements

The first issue is regarding whether the Apple Springs Water Works Sanitary District ("District") Board of Trustees ("Board") may continue conducting business with only two appointed trustees following a vacancy on the Board.

Based on our review of the applicable South Dakota statutes, our opinion is that the Board should appoint a third trustee as soon as reasonably possible. South Dakota law requires that a sanitary district board consist of “an odd number of members” and contain “at least three” members. See SDCL § 34A-5-14.1. The statute does not provide an exception allowing a sanitary district to operate indefinitely with fewer than three trustees.

In addition, SDCL § 34A-5-21.1 specifically addresses vacancies on the Board and provides that the remaining board members shall appoint a replacement to serve the remainder of the vacant term. The existence of this vacancy-filling mechanism indicates that the Legislature intended vacancies to be resolved by appointment rather than leaving the Board operating with fewer than the statutory minimum number of members.

Unfortunately, there is no specific South Dakota statute addressing whether a sanitary district board may continue normal operations during an extended vacancy. While a court could potentially recognize a limited period where remaining trustees must act to preserve the District while a replacement is sought, continued operation with only two members presents legal risk because the statutory minimum has not been met. It is hard to say how big of a legal risk that is. There is the potential for the undoing of decisions and potentially damages, depending on the actions taken.

Accordingly, our recommendation is that the remaining trustees appoint a third trustee as soon as reasonably possible. The appointed trustee would serve the remainder of the vacant term. Once the Board is properly constituted, the Board may continue operating under the normal quorum and voting requirements applicable to sanitary district boards.

Despite the above analysis, we recognize that finding willing candidates to serve on sanitary district boards can be incredibly difficult. However, the difficulty of locating a replacement does not appear to change the statutory requirement. Like we mentioned, it could be a mitigating factor if an issue ever arose, but it might not totally exculpate The Board.

Although the statutes do not expressly address the authority of a sanitary district board during the interim period following a vacancy, we believe that the remaining trustees may continue to take actions reasonably necessary to maintain the District’s ongoing operations and to fulfill its existing obligations. For example, actions necessary to maintain utility service, address routine operational matters, comply with existing legal requirements, and prevent immediate harm to the District would generally be viewed differently from major discretionary decisions.

However, until the vacancy is filled, the Board should exercise caution in taking significant actions that create new long-term obligations, substantially affect the rights or interests of District users, involve major policy decisions, or otherwise disrupt the status quo. Those actions present a greater risk of challenge, especially if not favored by the owners, because the Board is not currently composed of the statutory minimum number of members.

Accordingly, while the District should continue operating as necessary to avoid harm to the District, the Board should prioritize appointment of a third trustee and defer significant discretionary decisions until the vacancy has been resolved. Therefore, the most prudent course of action is to fill the vacancy before taking additional discretionary Board action that the Board otherwise would not need to do or that can wait. Alternatively, the District could explore the dissolution option detailed below.

ISSUE TWO: Dissolution of the Sanitary District

The Board has also asked whether the District may be dissolved and, if so, what procedures would be required.

South Dakota law provides two potential dissolution procedures. First, under SDCL § 34A-5-54, a sanitary district board may dissolve the district by unanimous vote if the district's boundaries have been fully annexed by a municipality. That procedure requires notice to District residents, public hearings, and preparation of a plan for disposition of District assets.

If the District has not been fully annexed by a municipality, the dissolution process is governed by SDCL § 34A-5-53. Under that statute, a majority of the voters of the District may submit a petition to the circuit court requesting dissolution. The proceedings then generally follow the procedures applicable to municipal dissolution under SDCL Chapter 9-6.

Knowing that the District has not been annexed and is unlikely to be annexed in the future, the only practical route for dissolution would be the voter petition process. A majority of District voters would need to support the petition, which would then be submitted to the circuit court for consideration. Upon approval, the court would enter an order dissolving the District and addressing the transition of responsibilities and disposition of assets.

With respect to District assets, SDCL § 9-6-9 provides that, following dissolution, the governing body remains in place for a limited period to wind up the affairs of the District, including disposition of property as directed by the circuit court. Because the Sanitary District's only significant asset appears to be approximately $90,000 in cash, the final disposition of those funds would be determined through the dissolution process under the direction of the court. While the statutes are not entirely specific regarding the treatment of cash assets in this circumstance, it is likely that the funds would ultimately be transferred or distributed as the court directs, potentially consistent with the treatment of municipal assets following dissolution. Essentially, the funds would likely go to the county.

With this in mind, the Board should also consider whether existing District funds should be applied toward legitimate District purposes before dissolution. Because District funds were collected through assessments for District operations, expenditures for necessary maintenance, repairs, improvements, or other authorized purposes may allow District residents to receive the benefit of those assessments. However, the Board should avoid expenditures that could be characterized as an attempt to distribute District assets or circumvent the statutory dissolution process.

Accordingly, if the District ultimately wishes to dissolve, the practical first step would be to discuss the matter with District voters and determine whether a majority supports dissolution. If so, the appropriate procedure would be preparation and filing of a dissolution petition with the circuit court.

ISSUE THREE: Compensation of Sanitary District Board Members

The Board has asked whether the Board may compensate trustees through a monthly “stipend” of $100 per trustee.

South Dakota law places limits on compensation paid to public officials. The South Dakota Constitution prohibits public payments unless authorized by law. SDCL § 34A-5-23 specifically addresses sanitary district trustee compensation and provides that the Board shall establish compensation and reimbursement for board members. The statute permits reimbursement for certain expenses and allows compensation for *days of actual service*, including attendance at meetings, hearings, investigations, and related duties.

The primary issue with a flat monthly stipend is that it does not appear to be *tied to actual service* performed by the trustees. A fixed payment made every month regardless of whether meetings, hearings, investigations, or other qualifying services occurred creates a risk that the payment could be viewed as an unauthorized salary rather than compensation permitted by SDCL § 34A-5-23.

A more defensible approach is for the Board to adopt a compensation policy or resolution establishing a per diem payment for each day of actual service, which would include attendance at duly called Board meetings and any other statutorily authorized official duties such as hearings or investigations. Under this structure, trustees would be compensated only when they actually perform qualifying service, consistent with SDCL § 34A-5-23.

In practice, the Board may set a per diem amount that applies to each duly noticed and attended monthly Board meeting, as meetings constitute “actual service” under the statute. The Board may also provide that additional per diem payments apply for other qualifying service events if they occur. The compensation structure should be clearly documented in a formal resolution and reflected in the Board minutes.

Essentially, the issue is not the $100 compensation, it is the fact that the term stipend implies that it is paid no matter what and whether work is performed or not. If the Board makes the $100 payment contingent on the trustee attending the monthly meeting, then that is permitted. That may be how the Board already handles it. If so, maybe the Board just need to change the terminology from “stipend” to “per diem”. If that is not the case, then the payment should be contingent on the trustee attending the meeting.

The Board may also reimburse trustees for allowable expenses, such as mileage and other authorized costs, consistent with applicable South Dakota reimbursement requirements.

Therefore, while the Board may have authority to compensate trustees for actual service, a $100 monthly stipend is likely not the best approach. A per-day compensation structure tied to actual trustee service would better align with the statutory language and reduce the risk of challenge.

Conclusion

These issues are largely interrelated and stem from the District's current operational structure and statutory requirements governing sanitary districts in South Dakota. While the statutes provide mechanisms for both continued operation and dissolution, they also impose clear minimum requirements for board composition and limitations on compensation practices.

In summary:

- The District should prioritize appointment of a third trustee to ensure compliance with statutory board composition requirements and reduce legal risk associated with Board actions.

- The District may continue to operate in a capacity necessary to maintain essential services, but should defer major discretionary decisions until the Board is properly constituted.

- Dissolution remains a legally available option through the voter petition process, and may be pursued if District residents prefer that path.

- Trustee compensation should be structured as per diem payments tied to actual service rather than a fixed stipend, in order to remain consistent with SDCL § 34A-5-23.

We appreciate the opportunity to provide this analysis. Please let us know if the Board needs further assistance.

Sincerely,

Lynn, Jackson, Shultz & Lebrun, P.C.

Ty M. Daly

Ty M. Daly
TMD:tmd