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## South Dakota Supreme Court Opinion Will Guide Local Zoning Decision-Making Throughout the State

**Legal Update**

02.12.2021

The South Dakota Supreme Court on Thursday, February 11, 2021, issued an opinion that substantially clarifies what constitutes a disqualifying conflict of interest under South Dakota law in the context of local zoning. *Holborn v. Deuel County Board of Adjustment et. al.*, 2021 S.D. 6. The case involves the approval of two wind farm special exception permits (SEPs) in Deuel County. Opponents claimed two decision-makers were biased because they received payments under terminated leases with the developer. The Circuit Court agreed and invalidated the SEPs. The Supreme Court reversed in a decision that will guide local zoning decision-making throughout the state.

The Court noted that “a local zoning board’s decision to grant or deny a conditional use permit is quasi-judicial and subject to due process constraints. As such, the constitutional right to due process includes fair and impartial consideration by a local governing board.” *Id.* at ¶ 21. The Court held that the county officials did not have disqualifying conflict of interest because:

- No evidence showed either board member would financially benefit, directly or indirectly, from the approval of the SEPs.
- The prior payments to the board members were based on the same per-acre payment terms as other leases and were between \$3,000-6,000—i.e., not an “extraordinary” amount.
- No evidence showed that the developer entered into the leases or made payments to curry favor.

In evaluating state recusal statutes, the Court held the officials had no “direct pecuniary interest” requiring recusal under SDCL 6-1-17 because there was no evidence the Board members stood to gain financially from their votes on the SEPs. With respect to SDCL 6-1-21, the Court also held that recusal was not required: “SDCL 6-1-21 cannot be read to prohibit public officials involved in quasi-judicial proceedings from speaking on, or even advocating generally for or against matters of public interest in their communities.” *Id.* at ¶ 41.

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The Court's decision provides much needed guidance concerning the standards for disqualification of local officials from making decisions on projects affecting their communities. As many developers are aware, energy projects in South Dakota are often developed in small communities, frequently raising the prospect of decision-makers having personal, family or business connections to a project. The Court's decision will help developers and local officials going forward to determine when those connections require recusal and when they do not.