

WEDNESDAY, AUGUST 25, 2010
10:00 A.M.

NO. 2

#25588

STATE OF SOUTH DAKOTA, ex rel,
MARTY J. JACKLEY and
ASSOCIATED SCHOOL BOARDS
OF SOUTH DAKOTA, INC.,
Plaintiffs and Appellees,

vs.

CITY OF COLMAN,
Defendant and Appellant.

Mr. William J. Ellingson
Mr. Paul M. Lewis
Attorneys at Law
PO Box 324
Flandreau SD 57028-0324
Ph: 997-2413

(FOR APPELLANT)

Mr. Jeffrey P. Hallem
Assistant Attorney General
1302 E Hwy 14 Ste 1
Pierre SD 57501-8501
Ph: 773-3215

(FOR APPELLEE STATE)

Mr. William H. Engberg
Counsel
Associated School Board of
South Dakota
PO Box 1059
Pierre SD 57501
PH: 773-2500

(FOR APPELLEE ASSOCIATED
SCHOOL BOARDS)

Mr. Richard P. Tieszen
Ms. Naomi R. Cromwell
Tieszen Law Office
PO Box 550
Pierre SD 57501-0626
Ph: 224-1500

(FOR APPELLEE ASSOCIATED
SCHOOL BOARDS)

The Honorable Tim D. Tucker
Third Judicial Circuit
Moody County

(CIV 09-36)

STATEMENT OF ISSUES

I

DOES COLMAN HAVE EXPRESS LEGISLATIVE AUTHORITY TO ENFORCE ITS MUNICIPAL TRAFFIC ORDINANCES ON THE PORTION OF STATE HIGHWAY 34 WITHIN ITS MUNICIPAL CORPORATE LIMITS?

The trial court found that Colman does not have express legislative authority.

State of South Dakota v. Hirsch, 309 N.W.2d 832, 834 (S.D. 1981)

SDCL § 9-29-1

SDCL § 9-31-1

SDCL § 9-31-3

SDCL § 32-14-5

II

DO STATUTORY CONSTRUCTION TESTS REMOVE COLMAN'S AUTHORITY TO ENFORCE ITS MUNICIPAL TRAFFIC ORDINANCES ON THE PORTION OF STATE HIGHWAY 34 WITHIN ITS MUNICIPAL CORPORATE LIMITS?

The trial court found that statutory construction tests did remove Colman's authority to enforce its municipal traffic ordinances on highway 34.

Olesen v. Town of Hurley, 2004 S.D. 136, 691 N.W.2d 324

City of Sioux Falls v. Peterson, 71 S.D. 446, 25 N.W.2d 556 (S.D. 1946)

City of Marion v. Schoenwald, 2001 S.D. 95, 631 N.W.2d 380

SDCL § 9-29-1

SDCL § 9-31-1

SDCL § 9-31-3

SDCL § 32-14-5

III

DO SOUTH DAKOTA CODIFIED LAWS, SOUTH DAKOTA DEPARTMENT OF TRANSPORTATION REGULATIONS, AND THE SOUTH DAKOTA CONSTITUTION PRE-EMPT COLMAN'S AUTHORITY TO ENFORCE ITS MUNICIPAL TRAFFIC ORDINANCES ON THE PORTION OF STATE HIGHWAY 34 WITHIN ITS MUNICIPAL CORPORATE LIMITS?

The trial court found that Colman's authority had been pre-empted.

State of South Dakota v. Eidahl, 495 N.W.2d 91 (S.D. 1993)

City of Sioux Falls v. Peterson, 71 S.D. 446, 25 N.W.2d 556 (S.D. 1946)

City of Aberdeen v. Forkel, 72 S.D. 536, 37 N.W.2d 407 (S.D. 1949)

SDCL §32-25-16