

**SOUTH DAKOTA DEPARTMENT OF LABOR & REGULATION  
DIVISION OF LABOR AND MANAGEMENT**

**TROY WELLMAN,**

**HF No. 1 G, 2014/15**

**Petitioner,**

**v.**

**DECISION**

**MOODY COUNTY, SOUTH DAKOTA**

**Respondent.**

This matter came before the Department of Labor & Regulation when Troy Wellman filed a Petition for Hearing on Grievance pursuant to SDCL 3-18-15.2. The Department conducted a hearing on February 3, 2015, in Flandreau, South Dakota. The matter was heard by Donald W. Hageman, Administrative Law Judge. Petitioner, Troy Wellman appeared pro se. Paul M. Lewis represented Respondent, Moody County.

***Legal Issue:***

This case presents the following legal issue:

Whether the Department of Labor and Regulation has jurisdiction to hear this matter?

***Facts:***

Troy Wellman is the elected Sheriff of Moody County. Wellman has administrative oversight of all personnel employed by the Moody County Sheriff's Department, including the work schedules for the deputies and dispatchers. When fully staffed, the Moody County Sheriff's Department employs four full-time dispatchers and an administrative assistant/dispatcher. The dispatchers are required to work three 12-hour work shifts one week and four 12 hour work shifts the next week. Due to dispatcher illness, pregnancy, injury, training, or job vacancy, Wellman has worked 186.5 hours since December of 2013 as a dispatcher, for which he feels he is entitled to additional compensation. Wellman met with the County Commission in the spring of 2014 and again in September of 2014 to discuss his request for additional compensation. Ultimately, the County Commission denied Wellman's request. Wellman then filed a Petition for Hearing on Grievance with the South Dakota Department of Labor & Regulation.

**Analysis:**

The Department's authority to review grievances is granted by SDCL 3-18-15.2. That provision states in part:

If, after following the grievance procedure enacted by the governing body, the grievance remains unresolved ... it may be appealed to the Department of Labor and Regulation...

SDCL 3-18-15.1. 1 (emphasis added).

SDCL 3-18-1.1 defines "grievance" as:

The term "grievance" as used in this chapter means a complaint by a public employee or group of public employees based upon an alleged violation, misinterpretation, or inequitable application of any existing agreements, contracts, ordinances, policies, or rules of the government of the State of South Dakota or the government of any one or more of the political subdivisions thereof, or of the public schools, or any authority, commission, or board, or any other branch of the public service, as they apply to the conditions of employment. Negotiations for, or a disagreement over, a nonexisting agreement, contract, ordinance, policy, or rule is not a "grievance" and is not subject to this section.

SDCL 3-18-1.1. (emphasis added).

SDCL 3-18-1 defines public employee. That statute states:

The words "public employees" as used in this chapter shall mean any person holding a position by appointment or employment in the government of the State of South Dakota or in the government of any one or more of the political subdivisions thereof, or in the service of the public schools, or in the service of any authority, commission, or board, or any other branch of the public service. The term does not include:

- (1) Elected officials and persons appointed to fill vacancies in elective offices and members of any board or commission;

SDCL 3-18-1 (emphasis added). As the duly elected Sheriff of Moody County, Wellman is specifically excluded from the group of individual who may seek review of a grievance by the Department of Labor & Regulation.

The adjudicatory jurisdiction of an agency is discussed by the South Dakota Supreme Court in O'Toole v. SD Retirement System, 2002 S.D. 77, 648 N.W.2d 342 (2002). There it stated:

The general rule is that administrative agencies have only such adjudicatory jurisdiction as is conferred upon them by statute. Johnson v. Kolman, 412 N.W.2d 109, 112 (SD 1987) (citing Springville Com. Sch. Dist. v. Iowa Dept. of

Pub. Inst., 252 Iowa 907, 109 N.W.2d 213 (1961); Montana Bd. of Nat. Res. & Con. v. Montana Power Co., 166 Mont. 522, 536 P.2d 758 (1975); 2 Am.Jur.2d Administrative Law § 328). Furthermore, “[an administrative agency] may not acquire jurisdiction by estoppel or consent, and, where it acts without jurisdiction, its orders are void.” Montana Bd. of Nat. Res. & Con., 536 P.2d at 762 (quoting 73 CJS Public Administrative Bodies and Procedures § 116). See also Pickering v. Illinois Human Rights Com'n, 496 N.E.2d 746 (111App2 Dist. 1986); and Powell v. Khodari-Intergreen Co., 303 N.W.2d 171 (Ia 1981).

An agency has only such power as expressly or by necessary implication is granted by legislative enactment; agency may not increase its own jurisdiction and, as a creature of statute, has no common-law jurisdiction or inherent power such as might reside in a court of general jurisdiction. Lee v. Div. of Fla. Land Sales & Condominiums, 474 So.2d 82, 284 (Fla App5Dist 1985).

The South Dakota legislature has not bestowed jurisdiction upon the Department to review this matter. Consequently, the matter must be dismissed.

***Order:***

This matter is Dismissed.

Dated this 12<sup>th</sup> day of May, 2015.

SOUTH DAKOTA DEPARTMENT OF LABOR & REGULATION

/s/ Donald W. Haageman  
Donald W. Hageman  
Administrative Law Judge