

**STATE OF SOUTH DAKOTA
OFFICE OF THE GOVERNOR
EXECUTIVE ORDER 2023-13**

Whereas, Whether a state legislator is entitled to appropriated funds through the state legislative process, having a significant impact on State government and public perceptions associated with the distribution of taxpayer money, has been a matter of public debate for over a century; and,

Whereas, Article 3, Section 12 of the South Dakota Constitution prohibits state legislators from being interested, directly or indirectly, in any contract with the State or any county during their terms in office and for one year thereafter; and,

Whereas, “The language of the constitution is plain. Its meaning cannot be mistaken. The purpose of the provision is apparent. It is intended to preclude the possibility of any member deriving, directly or indirectly, any pecuniary benefit from legislation enacted by the legislature of which he is a member. It is one of the most important of the many reforms attempted by the framers of our organic law. It is intended to remove any suspicion which might otherwise attach to the motives of members who advocate the creation of new offices or the expenditure of public funds.” *Palmer v. State*, 75 N.W. 818, 819 (S.D. 1898); affirmed by *Pitts v. Larson*, 2001 S.D. 151, ¶ 13, 638 N.W.2d 254, 257; reaffirmed again by *In re Noem*, 2020 S.D. 58, ¶ 12, 950 N.W.2d 678, 681; and,

Whereas, Responsible stewardship of taxpayer funds is crucial to operating an effective and trustworthy state and county government; and,

Whereas, As far back as 1913, the South Dakota Supreme Court has said, “A member of the state Legislature, by virtue of his office, stands in a fiduciary and trust relation towards the state; in other words, he is the confidential agent of the state for the purpose of appropriating the state’s money in payment of the lawful contractual obligations of the state, and it seems to be almost universally held that it is against sound public policy to permit such an agent, or any agent occupying a like position, to himself be directly or indirectly interested in any contract with the state or other municipality, during the period of time of the existence of such trust and confidential relationship. The private interest of such an agent should not become antagonistic to his public duty.” *Norbeck & Nicholson Co. v. State*, 142 N.W. 847, 849 (S.D. 1913); and,

Whereas, South Dakota’s Legislature is a citizen legislature, with its members honorably serving part-time, remaining engaged with their local communities and continuing their civilian professions until called upon to serve annually and in the interim, yet state Legislators may not have personal or professional interests in contracts with the State while in public service to the State; and,

Whereas, Each state Legislator took an oath to support the Constitution and has an affirmative obligation to avoid self-interested dealings and guard against conflicts of interest; and,

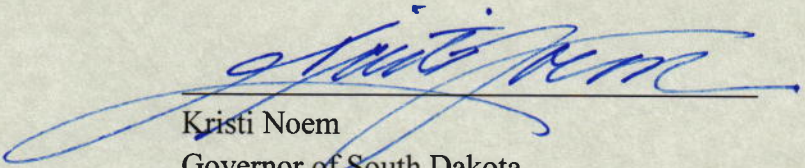
Whereas, All branches of state government and county government may also act to guard against such dealings:

NOW, THEREFORE, I, Kristi Noem, Governor of the State of South Dakota, by the authority vested in me by the Constitution and Laws of the State, do hereby Order and Direct each state agency, authority, bureau, board, commission, department, or institution of the State of South Dakota that is controlled by the Governor to incorporate an acknowledgment and certification into any contract for the signor to acknowledge that it understands Article 3, Section 12, has had the opportunity to seek independent legal advice if desired, and certifies that such contract is not made in contravention of the prohibition set forth in Article 3, Section 12 of the South Dakota Constitution.

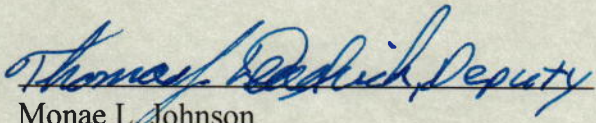
For those entities outside the jurisdiction of this Executive Order, including the judicial branch, the legislative branch, other constitutional offices, boards or authorities operating independent of executive oversight, and county governments, processes and procedures should be reviewed to ensure any contract is executed in accordance with Article 3, Section 12 of the South Dakota Constitution.

Dated in Pierre, South Dakota, this 11th day of August 2023.




Kristi Noem
Governor of South Dakota

ATTEST:


Monae L. Johnson
Secretary of State