

RESEARCH PROJECT ON AGENCY RULING PROCESS IN SOUTH DAKOTA

The vast majority rules and regulations are being adopted by both state and federal agencies. Congress and state legislatures across the country are increasingly delegating rulemaking tasks to administrative agencies. On the plus side, these agencies are able to use their expertise in addressing specific problems. On the negative side, however, agencies do not operate under the same kinds of democratic processes or with the same kind of democratic accountability as do elected legislative bodies. In overseeing and reviewing agency rules, courts continually have to balance the expertise benefit with the democratic accountability problem. One way in which courts and legislatures have tried to democratize the agency process is by requiring that agencies provide for public comment on proposed rules.

The research project being conducted by the Center attempts to look at exactly how effective this public comment procedure is. In so doing, the Center will examine specific South Dakota agencies and try to discern the degree of public comment that is actually received by agencies over a specified time period. Furthermore, the Center will also attempt to track whether the final agency rules seem to take into account the input provided during the public comment stage. The value of this project is in trying to reconcile the theory of providing opportunity for public comment with the actual reality of whether such comment is actually occurring, and then whether the agency seems to be considering that comment.