

## S.D. Schools Tap Reserves, Trim Spending

PIERRE (AP) — A survey of South Dakota school districts shows many have tapped reserve funds, frozen salaries and trimmed spending to deal with a cut in state financial aid.

Sen. Corey Brown of Gettysburg worked with legislative staff to send a survey to school districts. He says about two-thirds of the districts responded.

Brown says 80 percent of those responding plan to use reserve funds to get through the year and about 87 percent gave teachers no pay raise. But Brown says few schools have had to cut programs.

Wade Pogany of South Dakota Associated School Boards says schools are using temporary fixes to get through the budget crisis. But he says the long-term solution is stable, increased state funding.

State aid to schools was cut by 6.6 percent this year.

## Neb. Councilman Charged With Sex Assault

LINCOLN, Neb. (AP) — A city councilman in the western Nebraska town of Kimball has been charged with the sexual assault of a mentally disabled teenage boy.

The Scotts Bluff County sheriff's office says Scott Haun allegedly abused the 14-year-old boy on Sept. 3. According to an affidavit, the boy's mother told authorities that the 48-year-old Haun was visiting their rural home to drink and watch television.

The mother says she went to the bathroom, and found Haun in her son's bedroom several minutes later. Haun was allegedly kneeling on the floor next to her son, who was in his boxers. She said she told Haun to leave the room.

Haun was arrested and booked in the Scotts Bluff County Jail on a \$150,000 bond.

## Buffalo Skulls Found South Of Oahe Dam

PIERRE (AP) — Between 30 and 50 buffalo skulls have been found in an area south of the Oahe Dam on the Missouri River.

Oahe Dam Project Manager Eric Stasch tells KCCR radio that the skulls were found on an island that was created as a result of this summer's flood.

He says the skulls were discovered by Corps staff members after the water levels had dropped.

Stasch says that although such historic finds are not unusual, one with the items so well preserved is.

He says the corps is not releasing information about where the skulls were found, and it is illegal to remove items of cultural value from public lands.

## Pre-Sentencing Set In S.D. Prison Guard Killing

SIoux FALLS (AP) — The attorney for a 49-year-old inmate who pleaded guilty to the April killing of a South Dakota penitentiary guard says his client has waived his right to present mitigation evidence at pre-sentencing later this month.

Attorney Mark Kadi told Judge Bradley Zell on Friday that he has advised Eric Robert that the decision could lead to him getting the death penalty.

But Zell says the state still has to prove that the death penalty is warranted.

Robert changed his plea in September, telling the court that he bashed corrections officer Ronald "R.J." Johnson with a pipe, covered his mouth with plastic wrap and wore the dead man's uniform in a failed escape attempt.

Pre-sentencing is scheduled the week of Oct. 24.

Two other inmates are charged in the killing.

## S.D. Officer Cleared Of Using Excessive Force

CANTON (AP) — A jury has cleared a South Dakota police officer of wrongdoing in a civil lawsuit over alleged excessive force.

The *Argus Leader* reports that Canton Officer Adam Duplic used a Taser and pepper spray to subdue 56-year-old David Twedt on May 31, 2009, after confronting him about a possible drinking violation. Twedt later sued.

Twedt's attorney said Duplic's use of electric shocks over what amounted to a petty offense was excessive. Duplic's attorney said Twedt could have avoided being Tased by complying with Duplic's commands to stop.

Duplic was never reprimanded for his actions and remains an officer with the Canton Police Department. Twedt now lives in Inwood, Iowa.

## Lincoln Band Boosters Enter 'Glee' Contest

LINCOLN, Neb. (AP) — The band boosters at Lincoln Southeast High School have found a fundraiser they hope is better than band candy: "Glee."

The *Lincoln Journal Star* reports that Twentieth Century Fox Home Entertainment; Ryan Murphy, a creator "Glee"; and the National Association for Music Education are holding an online contest.

The "GLEE: Give A Note" contest is giving \$1 million to school music programs, including three top prizes of \$50,000 each.

The entrants made two-minute videos about why they needed the money. People can vote for the schools until Nov. 7. The top 100 vote-getters advance to a judging round for selection of the winners.

Booster club leader Christi Moock says the group fundraises all year long and couldn't pass up a chance to win \$50,000 for new tubas and sousaphones.

## Pierre Air Service Proposals Due

PIERRE (AP) — The deadline has arrived for air carriers to submit proposals for a flight connecting South Dakota's capital city with Minneapolis.

Delta Airlines plans to cut its Pierre-Minneapolis route Nov. 20 because of a drop in passengers. The federal Department of Transportation last month approved the move. The city has appealed that decision, saying the flight is important to businesses and residents, as well as state government.

Pierre airport manager Mike Isaacs tells KCCR radio that the federal DOT until Friday was accepting proposals for subsidized Essential Air Service routes in South Dakota. The Pierre-Minneapolis route does not receive EAS money, but Isaacs says the route could be included in proposals that airlines make for other cities such as Aberdeen.

# Neb. High Court Reinstates Crash Lawsuit

BY GRANT SCHULTE

Associated Press

LINCOLN, Neb. — A woman who was paralyzed in a 2005 train collision in southern Nebraska will get another chance to bring her case to trial, the Nebraska Supreme Court ruled Friday.

The high court returned the case to Lancaster County district court for consideration of whether the Union Pacific train crew applied the brakes early enough once they realized they were likely about to collide with a vehicle on the tracks. A Lancaster County district court judge dismissed the lawsuit in 2009.

Krista Rosencrans was 18 when the vehicle she was riding in was struck by a Union Pacific freight train near Belvidere in Thayer County. The rural crossing had no barriers or lights to warn motorists of an approaching train, and the driver later said she didn't see the train before pulling into the crossing.

Rosencrans and her mother, Rebecca Dresser, learned of the high court's decision shortly after it was released Friday morning and were pleased with the outcome, said Corey Stull, their Lincoln-based attorney. Stull said he had not yet studied the ruling in detail.

A phone message was left with Union Pacific's attorneys in Omaha. A Union Pacific representa-

tive declined to comment.

Rosencrans was a passenger in a vehicle driven by her 17-year-old friend Chanda McDonald that stopped at a stop sign at the crossing before proceeding across the tracks and into the train's path. The train was heading from North Platte to Marysville, Kan.

Rosencrans and her mother contended the Omaha-based railroad company was negligent because the train's horn didn't sound, and that train operators failed "to take timely action to slow or stop the train" once a crash appeared likely. The Nebraska Supreme Court rejected their horn argument and sided with the company, but concluded that the judge erred when he declined to consider whether the train was stopped soon enough.

The train engineer testified that he activated the emergency brakes when he saw vehicle pull onto the train tracks, before the train had entered the crossing.

"If this evidence were uncontroverted, we would agree with Union Pacific," the court said in its ruling. "But it is not. Contrary to the engineer's testimony, the train event recorder shows the emergency brake was not activated until the train had traveled 189 feet past the center of the railroad crossing."

Rosencrans said she saw the approaching train as they crossed the tracks and warned Mc-

Donald, who tried to back up. The vehicle didn't clear the tracks in time, and Rosencrans was paralyzed from the chest down. In her deposition, she described the crash: "(McDonald) had stopped and she started to go forward, and I had saw the train, and I don't remember if I'd yelled or screamed. She automatically put it — tried to put it in reverse and tried to back up, and she tried to grab my hand, and the next thing I remember, my eyes were closed, and I could hear glass being broken and the train had hit."

Rosencrans said in her appeal that neither she nor McDonald recalled hearing the train sound as it approached the crossing and that the district judge should have further considered whether it sounded before the collision.

Union Pacific presented evidence in district court that data recorders in each of the three locomotives on the train indicated the engineer activated the horn when the train was 4,902 feet from the crossing, or 35 seconds before the collision. But Rosencrans said in her appeal that while the horn was activated there was no evidence that it actually sounded.

"The district court simply took a blind leap-of-faith. ... The fact remains that there was no evidence showing that the event recorder actually records the audible horn sound or that the event recorder will only make a recording if the horn makes an audible sound," the appeal said.

# S. Dakota Meatpacking Plant To Pay Federal Fine

SIoux FALLS (AP) — John Morrell & Co. has agreed pay a \$206,000 federal fine and improve how it manages the ammonia refrigeration system at its meatpacking plant in Sioux Falls. The penalty comes in the wake of a state-imposed fine for pollution of a local river.

Under the federal settlement, the company must correct violations uncovered two years ago and file twice-yearly progress reports on the work. The 2009 inspection and a follow-up visit found multiple violations of federal laws governing the handling of large quantities of toxic chemicals, the Argus Leader reported (<http://bit.ly/pdVsR1>). The viola-

tions ranged from corroded and mislabeled equipment to deficient insulation.

"Anhydrous ammonia is acutely toxic and extremely hazardous when released into the air," Mike Gaydosh, director of the Environmental Protection Agency's enforcement program in Denver, said in a statement. "Failing to establish adequate risk management programs and keep plans updated can increase the risk of accidents and compromise the effectiveness of emergency response actions."

Chuck Sanger, a spokesman for John Morrell's parent company, Smithfield Foods, said the company is committed to operat-

ing a safe refrigeration system.

"John Morrell is working with regulators to resolve the audit findings, and significant capital investments have been under way for several months to modernize the refrigeration system," he said in a statement. "The work is expected to be completed by next year."

John Morrell recently was fined about \$44,000 by the state of South Dakota for polluting the Big Sioux River with ammonia dozens of times since 2008. In 2004, Morrell was fined more than \$18,000 after a corroded pipe ruptured and sent dozens of workers to the hospital. Morrell

did not admit liability in either settlement.

Morrell's recent fines are relatively minor considering the size of the business, said Mike Keller, dean of the University of South Dakota business school. John Morrell is one of three subsidiaries that make up Smithfield Foods' pork division, and the Sioux Falls slaughterhouse is the largest of Morrell's eight U.S. plants. In fiscal 2011, the pork division reported an operating profit of \$753 million.

"I would almost call it in the ordinary course of business — fix it, pay the fines and move on to the next thing," Keller said.

# Nebraska Supreme Court Throws Out DUI Conviction

BY MARGERY A. BECK

Associated Press

OMAHA, Neb. — A residential driveway is private property not subject to the state's DUI laws, the Nebraska Supreme Court reiterated on Friday in throwing out a Lincoln man's drunken driving and related convictions.

Jeffrey McCave was arrested by Lincoln police in his father's driveway in September 2007 on suspicion of trespassing after McCave's father called police when he refused to leave. Police found McCave in his car, which was not cranked, with an open beer listening to music.

Police later charged McCave with drunken driving, refusing to submit to a blood alcohol test and resisting arrest.

A Lancaster County Court jury convicted McCave of DUI, refusing to submit to the test and trespassing. It could not reach a verdict on the resisting arrest charge, and a mistrial was declared on that count. After dismissing the jury, the court found McCave guilty of violating the state's open container law.

McCave was sentenced to 30 days in jail on the DUI and refusing-to-submit convictions, fined \$1,050 for the DUI and open container violations and given two years of probation, during which time he could not drive. He also was given 10 days in jail for trespassing.

McCave appealed, saying officers lacked probable cause to believe that he had operated or been in physical control of his car while drunk. He and others had testified during his trial that his girlfriend had the keys to his car for most of the night, and that he had walked to a local bar and liquor store and back to his father's home, where his car was parked.

Police and prosecutors had said because McCave's car was overhanging a city sidewalk, he was on public property and therefore subject to state DUI and open con-

tainer laws. During trial, the county court found that it was reasonable for officers to infer that McCave had been driving while drunk, because police said the keys to McCave's car were in the ignition when they arrived and said McCave told officers he was going to leave in the car, although he did not.

The state's high court disagreed, saying it has previously held that a residential driveway is private property that is not open to public access. That characterization was not changed "just because McCave's vehicle overhung the sidewalk," Nebraska Supreme Court Judge William Connolly wrote for the court.

Further, McCave's statement to officers that he was leaving, even if his hand was on the key in the ignition, "showed only that he had considered driving but changed his mind," Connolly found. "The facts known to the officers were insufficient to support a conclusion that McCave had operated his vehicle while intoxicated."

The lower court erred in failing to determine that the officers lacked probable cause to arrest McCave for DUI, the high court said, making McCave's arrest for DUI unlawful.

"The county court erred in failing to suppress evidence derived from the arrest," Connolly wrote. "This error was not harmless."

## Sen. Nelson Fundraising Drops From Second Quarter

BY MARGERY A. BECK

Associated Press

OMAHA, Neb. — U.S. Sen. Ben Nelson's campaign fundraising from July through September pulled in less than half what it had the previous quarter, according to campaign finance reports for the third quarter.

The two-term Democratic senator from Nebraska raised nearly \$443,000 in the third quarter that ended Sept. 30. That compared with more than \$910,000 Nelson reported raising during this year's second quarter.

Nelson also raised less than Republican challenger Jon Bruning, Nebraska's attorney general. Bruning raised nearly \$584,000 in the third quarter — a jump from

the \$337,000 he brought in the previous quarter.

"We are very proud to have a broad-base of Nebraskans supporting Jon's campaign," said Bruning's campaign manager, Trent Fellers.

But Nelson has more cash on hand, with more than \$3.1 million, than any other contender. Bruning has about \$1.6 million cash on hand.

Another Republican, state Sen. Deb Fischer — who joined the race in late June — reported raising nearly \$229,000, with \$206,000 cash on hand.

Republican Nebraska State Treasurer Don Stenberg lagged far behind, raising \$53,000 in the third quarter. He had only \$18,410 cash on hand by Sept. 30.

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