

OFFICIAL OPINION NO. 76-108, Use of net revenues of municipal light plant operations for lowering consumer rates

November 5, 1976

Mr. Eldon Stoehr, Auditor General
State Capitol
Pierre, South Dakota 57501

OFFICIAL OPINION NO. 76-108

Use of net revenues of municipal light plant operations for lowering consumer rates

Dear Mr. Stoehr:

You have requested an official opinion from this office in regard to the following factual question:

QUESTION:

Should SDCL 9-39-4 be considered a restriction on the use of net revenues of municipal light plant operations to lowering consumer rates, or does it allow municipalities to utilize such profits to support other municipal activities?

SDCL 9-39-4 provides:

Every municipality shall have power to enter into contracts or agreements with the United States of America, or any agency thereof, the state of South Dakota, or any agency thereof, the political subdivisions of South Dakota or any other state, and the co-operative and privately owned power companies for such purposes as are herein set forth. *Such purposes shall be* for the purchase of electrical energy service and for the resale of electrical energy; to discontinue the generation of energy by its existing producing plants and to maintain such plants in a serviceable condition for standby service and to sell such electrical energy; to acquire electrical generation equipment and to maintain and construct the necessary facilities for the generation or transmission of electrical energy from a point within or without the state of South Dakota; *to allocate the net revenues from plant operations to the reduction of rates charged for electrical energy to ultimate consumers.* (Emphasis added.)

SDCL 9-22-1 states a general rule with respect to obligation of municipal funds. That statute provides:

All money belonging to the municipality derived from taxation, licenses, fines, forfeitures, the operation of waterworks or other public utility owned or operated by it, or from any other source, shall be paid into the municipal treasury, and the governing body by the annual appropriation ordinance shall designate to what fund or funds such money shall be obligated.

In my opinion, SDCL 9-39-4 should be read as a specific limitation on the general provisions and powers granted by SDCL 9-22-1. The language of SDCL 9-39-4 is not as clear as it might have been, but in my view it does contemplate that when municipalities contract regarding the powers and purposes provided in that statute, the net revenues *shall* be used to reduce rates to ultimate consumers. To this extent, I believe § 9-39-4 limits the seemingly broad provisions and discretion granted by § 9-22-1.

This approach is one grounded in well settled rules of statutory construction which require that statutes "in pari materia" are to be construed together so, if possible, to give effect to all statutes involved, *North Central Inv. Co. v. Walworth County Board of Education*, 98 N.W.2d 348 (1959), *In re Iversen's Will*, 118 N. W. 2d 17 (1962), and the terms of a statute relating to a particular subject will prevail over applicable general terms of another statute, *Clem v. City of Yankton*, 160 N.W.2d 125 (1968), *Antonien v. Swanson*, 48 N.W.2d 161 (1951).

In all probability not all municipal light plant operations will factually come within the scope of SDCL 9-39-4 since it deals with situations where municipalities *contract* or *agree* as provided by the first sentence of § 9-39-4. SDCL 9-39-4 does not appear to me to restrict the use of funds from the operations of municipally owned and operated electrical plants which do not involve a contract or agreement as provided by the first sentence of § 9-39-4.

Respectfully submitted,

WILLIAM J. JANKLOW
ATTORNEY GENERAL

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