

OFFICIAL OPINION NO. 76-35, Purchase of property (motel business)

March 20, 1976

Mr. Robert Glanzer, Manager
State Fair Board
P.O Box 1275
Huron, South Dakota 57350

OFFICIAL OPINION NO. 76-35

Purchase of property (motel business)

Dear Mr. Glanzer:

You have requested my official opinion based upon the following facts:

The Fair Board has been approached by an individual in regard to the sale of a motel business; who offered to sell it to the fair. It would be the board's intention, if they could purchase this business enterprise, to lease it out for eleven months of the year, and then use it at fair time, for the out-of-town judges, superintendents, and other fair personnel. There is also approximately eight to ten acres of ground that would go with this transfer of land, and the entire unit is located directly across the highway from the fair grounds; in addition it adjoins the ten acres of land now being purchased by the fair under contract for deed with Lloyd and Winifred Loban.

In relation to the foregoing facts, you request my official opinion upon the following questions:

1. Can the Fair Board buy such a property as a motel?
2. Could it be leased out on an eleven month basis and utilized by the fair during the time of the state fair?

SDCL 1-21-14, allows the Fair Board to pay all reasonable and necessary claims out of the revenues generated by the State Fair.

§1-21-7 further allows the Fair Board to contract and be contracted with and to purchase, hold and sell property. This latter provision does not limit the purchase of property to personal property but also must include real property.

However, the purchase of a motel to be leased out on an eleven month basis with the Fair Board using it the twelfth month is, in my opinion, contrary to Article XIII § 1 of the South Dakota Constitution. Article XIII § 1 reads in part as follows:

For the purpose of developing the resources and improving the economic facilities of South Dakota, the state may engage in works of internal improvement, may own and conduct proper business enterprises, may loan or give credit to, or in aid of, any association, or corporation, organized for such purposes.

I am of the opinion that the purchasing of a motel, which is a business enterprise, would not be for the "purpose of developing the resources and improving the economic facilities of South Dakota." I am also of the opinion that the scope of the Fair Board's powers and duties, as found in §1-21, are not broad enough nor do they contemplate the purchasing and leasing of a motel business. Therefore, the answer to your first question is NO, the State Fair Board cannot buy and lease a motel as you describe.

In that the answer to your first question is negative, there is no need to answer your second question.

Respectfully submitted,

WILLIAM J. JANKLOW
ATTORNEY GENERAL

WJJ:RVJ:dh