

OFFICIAL OPINION NO. 77-14, Whether school activities and organizations are tax exempt from Chapter 10-45

January 27, 1977

The Honorable Homer Harding
Senate Majority Leader
314 Mary Lane
Pierre, South Dakota 57501

Official Opinion No. 77-14

Whether school activities and organizations are tax exempt from Chapter 10-45

Dear Senator Harding:

You have requested an opinion from this office based upon the following factual situation described by you:

FACTS:

It has come to your attention that the South Dakota Department of Revenue has taken certain actions to collect sales tax on sales to schools and is in the process of initiating further actions on sales to and by schools. This involves collection of tax on transactions that have not historically been taxed, but is a broader interpretation of statutory language.

Specifically, the taxes will be collected on sales to and by what in the past have been called activity accounts and under the Unified Accounting System are presently called "Trust and Agency Accounts." These accounts involve various organizations that operate as an extension of the educational program and generally involve little or no direct appropriation from the school district's budget. Each organization does have an advisor who is a staff member, and space, heat and lights are furnished by the district as well as financial accounting-record keeping, writing receipts, paying bills, etc.

Historically, the test of whether tax should be paid on purchases is whether the purchased commodity is for personal use by an individual. This test was probably developed by the

Division of Legislative Audits and has been followed by schools for a number of years.

In the Department of Revenue's Newsletter of December, 1975, retailers were told that, "Any organization connected with schools making a purchase of merchandise is not exempt from the payment of the tax." This was listed under rule changes.

The Department of Revenue personnel have indicated since this time that the Department plans to have every school obtain a sales tax license and remit tax for all sales made by schools, including admissions to ball games and band concerts as well as other money raising activities such as cake raffles or concessions.

Based on the above facts, you asked the following questions:

QUESTIONS:

1. Are school activities and organizations supervised and managed by the school district classified as educational for tax exemption purposes?
2. If the above activities and organizations are exempt, does the exemption cover both sales to and sales by school sponsored and supervised organizations?
3. If schools are not exempt, then what statutory changes would be necessary to clearly establish the exemption?

SDCL 10-45-10 and 10-45-13 are the relevant statutes in regard to the questions raised. These statutes provide:

SDCL 10-45-10. There are hereby specifically exempted from the provisions of this chapter and from the computation of the amount of tax imposed by it, the gross receipts from sales to the United States, to the state of South Dakota, to public or municipal corporations in the state of South Dakota, to any relief agency, which shall mean a nonprofit charitable organization which devotes its resources exclusively to the relief of the poor and distressed or underprivileged, and has been recognized as an exempt organization under Section 501(c)(3) of the Internal Revenue Code, or to any Indian tribe.

SDCL 10-45-13. There are hereby specifically exempted from the provisions of this chapter

and from the computation of the amount of tax imposed by it, the gross receipts from the sales of tickets or admissions to the grounds and grandstand attractions of state, county, district, regional, and local fairs, and except for the state fair, without regard to the number of days such fairs and attractions may be conducted, and community operated celebrations or shows sponsored by chambers of commerce or similar nonprofit corporations or associations; and the gross receipts from educational, religious, benevolent, fraternal, or charitable activities, where the entire amount of such receipts after deducting all costs directly related to the conduct of such activities is expended for educational, religious, benevolent, fraternal or charitable purposes, and which receipts are not the result of engaging for more than five consecutive days in a business or occupation otherwise taxable, and provided that all organizations claiming this exemption shall pay this tax on all goods and services otherwise subject hereto and used in the conduct of such activities.

IN RE QUESTION NO. 1:

In regard to your first question, two issues are presented. The first issue is whether or not SDCL 10-45-13 applies to schools, and the second question is how one delineates between school related programs and activities qualifying for the exemption and those programs and activities which would not qualify for the exemption.

First of all, it is my opinion that SDCL 10-45-13 does apply to schools and that it does thereby establish a tax exemption for school activities "gross receipts." In my judgment, the Legislature must have intended such an effect since it specifically refers to "educational" activities.

The second issue is much more difficult. There are obviously a large number of extracurricular programs and activities in schools in broad areas such as music, athletics, and forensics. There are also a large number of "entities" such as junior and senior "classes" or "committees" to boost the band or to purchase new uniforms for some school group. It has also come to my attention that some schools engage in activities such as selling plants, old books and magazines, paper, and personal school supplies. Perhaps some or all of the above have their funds handled through the school's "trust and agency" account.

As stated above, it is my opinion that [SDCL 10-45-13](#) grant a tax exemption to schools in "amounts received" as part of the educational activities and programs of the school. In my

judgment, functions and activities such as athletic events, music concerts, and school plays are “educational activities” within the scope of SDCL 10-45-13 and, therefore, are tax exempt.

It is my understanding that the argument has been raised in support of taxing ticket receipts for an activity such as a football or basketball game, that such is “a business or occupation otherwise taxable” and that the schools engage in them for more than five consecutive days by holding practices. Accordingly, the argument goes they are not capable of being exempt under SDCL 10-45-13. I do not concur in this interpretation.

To more specifically answer your first question, I do believe that SDCL 10-45-13 grants a tax exemption for gross receipts for admissions to school activities which are organized, supervised or financed by the school. It is further my judgment that school classes and their activities would normally be supervised by the school and thus part of the educational activities or programs of the school.

The key, in my judgment, appears to be whether or not the activity is organized, supervised or financed by the school, not whether the “trust and agency account” is involved. Further, ARSD 64:06:02:69 is not necessarily inconsistent with this conclusion in that the rule does not deal specifically with *school* athletic events.

IN RE QUESTION NO. 2:

In regard to your second question, SDCL 10-45-10 is the applicable statute governing the exemptions of sales *to* public agencies. In my opinion this exemption is available for sales to all schools, public and nonpublic, and to school activities or programs which are supervised, financed or organized by the school. Once again, it appears to me that the key is whether or not the sale is to school organized, supervised or financed matters, not whether the “trust and agency” fund is involved. (See also SDCL 13-53-3 for a specific exemption for sales to school lunch programs.)

IN RE QUESTION NO. 3:

In regard to your third question concerning statutory changes, I would suggest that if it is desired that schools be given broader tax exemptions in both areas of sales to and by schools, SDCL 10-45-10 and SDCL 10-45-13 could both be amended to clearly establish

more specific exemptions and to define the limitation of these exemptions. New sections to Chapter 10-45 could also be added setting forth the exemptions in more detail.

Respectfully submitted,

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Attorney General

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