

OFFICIAL OPINION NO. 84-13, Loan of public funds

March 29, 1984

Mr. Maurice C. Christiansen  
Auditor General  
Department of Legislative Audit  
435 South Chapelle  
Pierre, South Dakota 57501

OFFICIAL OPINION NO. 84-13

Loan of public funds

Dear Mr. Christiansen:

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

FACTS:

Numerous counties have loaned money to cities, schools, and townships located within their county on a very short-term basis to be repaid to the county by deducting the amount of the loan from the respective subdivision's following month's tax remittance of collections made by the county on that subdivision's behalf.

Some other counties have loaned money to political subdivisions within the respective county for periods of up to five years. These loans have been for various purposes but have included the construction of a water system, to do road work on township roads and one loan is being considered for five years to build a Boy's Club.

Based upon the above facts, you have asked the following questions:

QUESTIONS:

1. May a county loan money to other political subdivisions?

2. If the answer to question number one is yes, which political subdivisions are eligible for these loans and can other groups, such as senior citizen groups, 4-H clubs, etc., obtain these loans?

3. If the answer to question number one is yes, for what period of time can such loans be made?

4. If the answer to question number one is yes, what interest may, or must, the county charge the borrower?

IN RE QUESTION NO. 1:

There is no provision in any of the statutes dealing with county fiscal powers which allows for the county to loan money to any entity, be it another political subdivision or other non-profit group. With such a comprehensive set of laws dealing with county fiscal powers, the failure to include this power indicates that this power is not available to the county. Argo Oil Corporation v. Lathrop, 72 N.W.2d 431 (S.D. 1955). Therefore, it is my opinion that the answer to your first question is NO, a county may not loan money to other political subdivisions.

IN RE QUESTION NOS. 2-4:

Based on the answer to question No. 1, it is not necessary to answer your other three questions.

Respectfully submitted,

Mark V. Meierhenry  
Attorney General