

OFFICIAL OPINION NO. 84-46, Tax revenues in municipal promotion

November 28, 1984

Mr. Martin Weeks, Jr.
City Attorney
Post Office Box 435
Vermillion, South Dakota 57069

OFFICIAL OPINION NO. 84-46

Tax revenues in municipal promotion

Dear Mr. Weeks:

On behalf of the City of Vermillion, you have requested an answer to the following question relative to SDCL 9-12-11 and 10-52-8:

QUESTION:

Can a city or a commercial club use monies collected from a non-ad valorem tax under SDCL Ch. 10-52 to:

1. Fund grants to industries willing to locate in the city;
2. Lend funds to industries willing to locate in the city;
3. Construct facilities to be given or lent without consideration to industries willing to locate in the city; and
4. Do any of the above indirectly by transferring money to a commercial club to pay for costs incurred in facilitating one or more of the above?

SDCL 9-12-11 provides as follows:

A city may appropriate money from its general fund to promote itself. If there are commercial clubs, chambers of commerce, or industrial development corporations organized and incorporated as non-profit corporations under the laws of the state of South Dakota for the purpose of promoting the city, the appropriations or any part thereof may be paid to

such organizations for expenses incurred for promoting the city. Payments to these organizations shall be based on programs previously submitted to the governing board by them and they shall be required to maintain complete records on all their activities and shall provide a certified audit of those records to the governing board of the city at the close of each fiscal period. (Emphasis added.)

The gist of this statute is simple. A city may appropriate money from its general funds so long as the money appropriated is used to pay for the 'promotion' of the city. 'Promotion' is a broad term and encompasses anything which contributes to the growth, enlargement or prosperity of something else or otherwise furthers, encourages or advances the same. Coden Beach Marina, Inc. v. City of Bayou La Batre, 284 Ala. 718, 228 So.2d 468 (1969); People v. Augustine, 232 Mich. 29, 204 N.W. 747 (1925);

Black's Law Dictionary, 1093 (5th Ed. 1979); See generally, 34 Words and Phrases, 'Promote' 556 (1959) and supplement thereto.

Under such a definition, if a city desires to construct a downtown mall or build a trade expo center, or even to finance new businesses or put on sporting events or plays, it may properly do so as a 'promotion.' Likewise, a city may properly pay to a commercial club, as contemplated in SDCL 9-12-11, appropriated money from its general fund for expenses incurred by the club in establishing any of the aforementioned 'promotion' programs; provided, however, that the programs are submitted to the city ahead of time and complete records are maintained on them.

Such a view is not inconsistent with the statutory history of SDCL 9-12-11 or prior official opinions of this office. See 1911 S.D. Sess. Laws, Chapter 244, § § 1 and 2; 1913 S.D. Sess. Laws, Chapter 124; 1919 Revised Code § 6170(15); SDC § 45.0202(13); 1971 S.D. Sess. Laws, Chapter 55; and 1978 S.D. Sess. Laws, Chapter 62, § 3; 1923-24 A.G.R. 79, 84; 1957-58 A.G.R. 178; 1963-64 A.G.R. 187; Official Opinion No. 70-41; See also, 79 A.L.R. 466. A view of the statute's history reveals that up until 1971, the purpose of SDCL 9-12-11, and all of its precursors, was 'advertising' the city. 'Advertising' was defined and interpreted rather narrowly by my predecessors, who opined that the term precluded a city from using appropriated funds to (1) construct a tourist camp, 1923-24 A.G.R. 79; (2) produce musical concerts, 1957-58 A.G.R. 178; and (3) establish children's playgrounds and parks, *Id.* In 1971, in an apparent response to a 1970 Attorney General Opinion on the subject, See Opinion No. 70- 41, and other prior Attorney General opinions concerning

same, the Legislature amended SDCL 9-12-11 by excising, among other things, the word 'advertising' and replacing it with the word 'promotion.' The effect was to broaden the scope of the statute and thus enable cities to expend appropriated monies on programs and activities which went beyond merely 'advertising' the city.

SDCL 10-52-8 provides as follows:

Notwithstanding the tax rate limitations of § 10-52-2 or § 10-52-2.1, any incorporated city or town may impose an additional municipal non-ad valorem tax at the rate of one percent upon the gross receipts of all leases or rentals of hotel, motel, campsites or other lodging accommodations within the municipality for periods of less than twenty-eight consecutive days, or sales of alcoholic beverages as defined in § 35-1-1, or establishments where the public is invited to eat, dine or purchase and carry out prepared food for immediate consumption, or ticket sales or admissions to places of amusement, athletic and cultural events, or any combination thereof. The tax shall be levied for the purpose of land acquisition, architectural fees, construction costs, payments for civic center, auditorium or athletic facility buildings, including the maintenance, staffing and operations of such facilities and the promotion and advertising of the city, its facilities, attractions and activities. Such taxes shall conform in all respects to the state sales and use tax on such items with the exception of the rate. (Emphasis added.)

As indicated by the underlined portion above, this statute empowers the city to expend funds raised from a non-ad valorem tax for the purpose of 'the promotion and advertising of the city, its facilities, attractions and activities.' In my view, the Legislature intended, as it did in SDCL 9-12-11, for this purpose to be broad in scope so as to allow cities freedom and leeway in their tax expenditures. Clearly, if the Legislature intended otherwise, it would have only used the word 'advertising' and would not have included the word 'promotion' along with it in the statute.

Construing SDCL 9-12-11 and 10-52-8 together, I am of the opinion that a city can use monies collected under SDCL Ch. 10-52 to:

- (1) Fund grants to industries willing to locate in the city;
- (2) Lend funds to industries willing to locate in the city; and

(3) Construct facilities to be given or lent without consideration to industries willing to locate in the city.

I am also of the opinion that a city may transfer funds collected under SDCL 10-52-8 to a commercial club to pay for expenses incurred by the club in the facilitation of any of the above. The answer to your question, therefore, is YES, the cities have such power and the use of that power has been left to the wisdom of city officials.

Respectfully submitted,

Mark V. Meierhenry
Attorney General