

OFFICIAL OPINION NO. 86-16, Use of sales tax on lodging for private, non-profit corporation purposes

April 29, 1986

Mr. John J. Delaney, Sr.
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OFFICIAL OPINION NO. 86-16

Use of sales tax on lodging for private, non-profit corporation purposes

Dear Mr. Delaney:

You have asked for an official opinion from this office based on the following facts:

FACTS:

The High Plains Heritage Society is located in Spearfish, South Dakota. The Heritage Society has been organized as a historical and educational society pursuant to its articles of incorporation and qualifies as a tax exempt non-profit corporation under Section 501(c)(3) of the Internal Revenue Code. The Society was organized for the following purposes, among others: (1) the construction of High Plains Heritage Center, (2) to obtain operational costs of the High Plains Heritage Center and (3) to develop programs for the maintenance of the heritage of the high plains.

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

QUESTION:

May the taxes obtained pursuant to SDCL 10-52-8 be used upon approval by the City of Spearfish for the items addressed in the request?

The answer to your question is yes. SDCL 10-52-8 states as follows:

The tax shall be levied for the purpose of land acquisition, architectural fees, construction cost, payment 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, and facilities, attractions and activities.

No definition is found within our statutes of 'civic center.' No definition of 'promotion' is found within Chapter 10-52 of the South Dakota Code. However, the normal definition of the word 'civic' is defined as relating to a city or civil affairs of the city. In my opinion, the construction and operation of the Heritage Society is a civil affair and relates to improved citizenship of the residents of any community. The legislature obviously did not wish to limit SDCL 10-52-8 to facilities only for athletic events or civic centers which would only be used for large music concerts, athletic and other spectator events.

The City of Spearfish is the final arbitrator of the projects for which taxes may be levied. If the City of Spearfish, through its elected representatives, determines that the operation of a Heritage Museum would promote the city or is related to the civic affairs of the community, then the taxes raised pursuant to SDCL 10-52-8 may be used for those purposes.

Obviously, the legislature wished to delegate broad discretion to the local communities of our state to determine the needs of their communities. If, for example, a community of the Black Hills wished to promote local art, it would appear that the legislature has approved the use of locally levied taxes for the building of an art museum which would attract tourists and also develop the cultural awareness of the members of the community.

Therefore, I see no prohibition by laws of the State of South Dakota for the City of Spearfish, pursuant to SDCL 10-52-8, to fund a part or all of the High Plains Heritage Society's operations to be located in that community.

I believe that the city councils throughout our state can make the proper determination for the use of funds raised within their communities and to determine whether or not those operations promote the city or its attractions and activities.

Respectfully submitted,

Mark V. Meierhenry
Attorney General