

OFFICIAL OPINION NO. 87-13, Fund raising for a library by a city

May 7, 1987

Mr. Eugene J. Irons
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P.O. Box 348
Canton, South Dakota 57103-0348

OFFICIAL OPINION NO. 87-13

Fund raising for a library by a city

Dear Mr. Irons:

You have requested an official opinion based upon the following factual situation:

FACTS:

City of Canton desires to solicit contributions for the construction of a public library in the City of Canton and to hire a fund raising organization for the purpose of organizing the solicitation of such contributions.

Based upon those facts you have asked the following question:

QUESTION NO. 1:

May a contract be entered into with the fund raising organization for this purpose and an agreed fee paid the fund raising organization from the City's general fund?

IN RE QUESTION NO. 1:

As a general proposition SDCL 9-12-11 can be read to grant fairly broad authority for a city to use general funds to promote itself. This statute provides:

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 nonprofit 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.

Recent opinions of this Office have tended to give a fairly expansive reading to the section. See, e.g., Opinion No. 84-46 and Opinion No. 87-11. Under this rationale, if the City of Canton concluded that the existence of a public library in the City would promote the City, it could use its funds to solicit contributions for this purpose.

In this specific case, however, there is a rather specific limitation on the power of a city to use funds for this purpose. SDCL 9-12-15 provides:

Every municipality shall have power to establish and maintain a municipal library, in the manner and subject to the conditions provided in Chapter 14-2.
[Emphasis supplied.]

Clearly, from the language set out above, there is a limitation on the City's power to establish or assist in establishing a municipal library. The statute limits the City to the conditions provided in SDCL ch. 14-2. The conditions found in chapter 14-2 include a requirement for a local government unit to provide and maintain quarters for its public library - § 14-2-43; appropriations of funds made to a public library building fund-§ 14-2-46; and a general limitation found in § 14-2-47 to using public funds for "the provision of library services, for the purchase of public library materials, and for the provision and maintenance of quarters for the public library." The existence of the specific authorities argue against an implied authority to use public funds to hire a fund raising organization to solicit contributions.

Based upon the foregoing statutes, the answer to your question is that the City of Canton may not use its general fund to hire a fund raising organization to solicit funds for the construction of a public library in the City of Canton.

Sincerely,

Roger A. Tellinghuisen
ATTORNEY GENERAL