

OFFICIAL OPINION NO. 88-07, Use of sales tax funds in promotion of municipalities

March 10, 1988

Mr. Robert A. Warder
City Attorney
Town of Keystone
P.O. Box 10
Hill City, South Dakota 57745

Official Opinion No. 88-07

Use of sales tax funds in promotion of municipalities

Dear Mr. Warder:

You have requested my official opinion on the question of whether the Town of Keystone, which is attempting to enact an additional one percent sales tax under § 10-52-8, may use the money derived from such tax for the purchase, construction and maintenance of city parking in the Town of Keystone in order to promote the town and businesses located therein.

So far as applicable that section reads in part as follows:

... 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 operation of such facilities and the promotion and advertising of the city, its facilities, attractions and activities.

Official Opinion 84-46 held that pursuant to SDCL 9-12-11 a city may appropriate money from its general fund to promote city activities and held:

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.

That opinion went on to hold construing § § 9-12-11 and 10-52-8 together:

A city might use moneys collected under § 10-52 to fund grants to industries willing to locate in the city, lend funds to industries willing to locate in the city and construct facilities or lend without consideration to industries willing to locate within the city.

Subsequent to that opinion, Official Opinion 86-16, issued by Attorney General Meierhenry, determined that a municipality might use funds collected under the authority of § 10-52-8 to fund the construction, operation and maintenance of a non-profit historical and educational society. The Attorney General held:

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.

It would appear to me, and I so hold, that a municipal parking lot in a town noted for tourist attractions would have at least as many promotional aspects for the municipality as would the development of a heritage center.

The answer to your question is therefore that the Town of Keystone may use funds from the extra penny sales tax to carry out the activity described in your request.

Respectfully submitted,

Roger A. Tellinghuisen
Attorney General