

OFFICIAL OPINION NO. 89-03, Definition of Capital Improvement

**January 19, 1989**

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Department of Legislative Audit  
435 South Chapelle  
Pierre, South Dakota 57501

**OFFICIAL OPINION NO. 89-03**

Definition of Capital Improvement

Dear Mr. Christiansen:

You have requested an official opinion on the following facts:

**FACTS:**

Municipalities have interpreted capital improvements to mean many things such as swing sets, street repair, police cars, water/sewer lines, utility transformers and grants to counties and school districts for capital improvements. The 1988 Legislature rejected an amendment which would have changed the language from capital improvement to capital expenditure. (See 1988 HB 1027.) The change was rejected because it would have liberalized the use of the additional one percent.

Concerning this you have asked the following question:

**QUESTION:**

What types of expenditures qualify as capital improvement under SDCL 10-52-2?

SDCL 10-52-2 provides for the imposition of a non-ad valorem tax by cities or towns within the state. It requires that if the tax is on items also taxed under 10-45 and 10-46 the same must conform in all respects to the state tax with the exception of the rate and the rate may not be in excess of two percent. It further provides that a municipality which enacts a tax in excess of one percent must exempt certain agricultural parts and machinery and animal health products and medicines. The section then provides:

If a municipality increases its tax rate above one percent the revenue generated from the tax increase shall only be used for capital improvement, land acquisition and debt retirement.

This increase and its restrictive use is a separate restriction from that found in the tax imposition of 10-52-8 which provides that an increase may be used for things other than capital improvements if the conditions of that section are met. This opinion is limited strictly to the provisions of 10-52-2.

SDCL 2-14-4 provides:

Whenever the meaning of a word or phrase is defined in any statute such definition is applicable to the same word or phrase wherever it occurs except where a contrary intention appears.

There is such a definition of capital improvements in SDCL 5-14-1 which reads as follows:

Capital improvements shall be classified as follows:

(1) "New construction" means expenditures authorized for new buildings or new facilities and includes the cost of architectural and engineering services, site preparation, constructing, furnishing, equipping such buildings and facilities for use, including heating, plumbing, ventilation, water, sewer, and electrical facilities with necessary connections to existing systems, the construction of sidewalks, and landscaping the grounds. No expenditures may be made for land acquisition costs from appropriations provided for new construction. This category shall not include roads and highways constructed under the supervision of the department of transportation nor minor park improvements and dams constructed under the supervision of the department of game, fish and parks.

(2) "Land acquisition" means expenditures authorized for the purchase of land and improvements affixed to the land. It shall also include sewer, street and curb and gutter improvements that may start at the time of purchase of the land or later result as improvements to the land so acquired.

It should also be noted that the Municipal Accounting Manual prepared by your department charts certain accounts in Section 2 of that manual. Included is account 430 for capital outlay, including land, all costs involved in land purchases, new buildings and structures and

major improvements to buildings and structures, furniture and minor equipment, machinery and automotive equipment, street improvements not including minor repairs and re-oiling, which should be included under current expenses, and all capital expenditures which are not otherwise classified. The criteria for things other than land and buildings seems to be that the item is used or intended to be used for longer than one year.

It is my opinion that the definition of capital improvements in 5-14-1 is applicable to the same phrase contained in 10-52-2 since no contrary intention appears that the general definition should not apply. It is my further opinion that the items which you have included in your accounting manual are appropriate to be considered as capital improvements.

Respectfully submitted,

ROGER A. TELLINGHUISEN  
ATTORNEY GENERAL

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