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August 04, 2017

Mitchell D. Johnson
Keystone City Attorney
2902 W. Main St. Suite 1
Rapid City, South Dakota 57702

OFFICIAL OPINION No. 17-04

Re: **Requirements for Formulation of a Business Improvement District**

Dear Mr. Johnson,

In your capacity as City Attorney for the Town of Keystone, you have requested an official opinion from the Attorney General's Office based on the following question.

QUESTION:

Whether a municipality may, under SDCL ch. 9-55, create a business improvement district when that municipality has not established a comprehensive zoning plan or passed any zoning ordinances?

ANSWER:

No, SDCL ch. 9-55-4 sets forth the required prerequisites to form a business improvement district. A municipality that lacks zoning ordinances does not have the statutory authority to establish a business improvement district.

FACTS:

The town of Keystone aspires to create a business improvement district (BID) pursuant to the authority granted municipalities by SDCL ch. 9-55. Keystone, however, lacks a comprehensive zoning plan and zoning ordinances of any type.

IN RE QUESTION:

Under SDCL 9-55-4:

A business improvement district may only be created as provided by this chapter and shall be within the boundaries of an established business area of the municipality *zoned for business, public, or commercial purposes*. For the purposes of this chapter, an established business area, may also include noncontiguous property within the incorporated municipality that has a common zoning designation. Any business improvement district that includes noncontiguous property pursuant to this section, may by resolution of the governing body, add qualifying property to the business improvement district. (emphasis added).

The South Dakota Supreme Court has continually reiterated that the purpose of statutory construction is to discover a statute's true intention primarily through an analysis of its language. *In re Estate of Ricard*, 2014 S.D. 54, ¶ 8, 851 N.W.2d 753, 755-56 (citations omitted). As a result, "[w]ords and phrases in a statute must be given their plain meaning and effect." *In re Taliaferro*, 2014 S.D. 82, ¶ 6, 856 N.W.2d at 806-07 (citations omitted). A statute that has clear, certain, and unambiguous language does not need interpretation; rather, a court need only declare the Legislature's clearly expressed intentions. *Id.* Further, we are to assume that the Legislature "never intends to use surplusage in its enactments, so where possible the law must be construed to give effect to all its provisions." *State ex rel. Department of Transportation v. Clark*, 2011 S.D. 20, ¶ 10, 798 N.W.2d 160, 164.

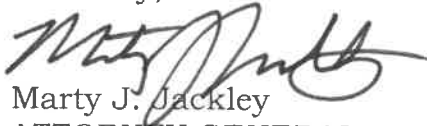
The town of Keystone has not established a comprehensive zoning plan and lacks any municipal zoning ordinances. The Legislature's conscious use of the word "zoned" in SDCL 9-55-4 is clear, certain, and unambiguous. *Taliaferro*, 2014 S.D. 82, ¶ 6. The statute restricts the creation of a BID to an established business area of the municipality "zoned for business, public, or commercial purposes." Municipal corporations possess only those powers given to them by the Legislature. *State ex rel. Jackley v. City of Colman*, 2010 S.D. 81, ¶ 5, 790 N.W.2d 491, 493 (citations omitted). None of the property located in Keystone is specifically "zoned for business, public, or commercial purposes" and thus, cannot meet the statutory requirements for the creation of a BID. A municipality that lacks zoning ordinances does not have the statutory authority to establish a business improvement district.

CONCLUSION

I conclude that SDCL 9-55-4 requires a municipality to have an area specifically zoned for business, public, or commercial purposes before the

municipality may establish a BID. To conclude otherwise would fail to give full effect to each word of the statutory grant of authority. As Attorney General, it is my duty to interpret the meaning and intent of the law as written by the Legislature. If a different conclusion is desired, the Legislature must be asked to amend the statute, or the municipality must satisfy the zoning plan requirements.

Sincerely,

A handwritten signature in black ink, appearing to read "Marty Jackley", written in a cursive style.

Marty J. Jackley
ATTORNEY GENERAL

MJJ/SRB/ZAM/lde