
From: Jim Leach <[REDACTED]>
Sent: Tuesday, October 25, 2022 3:50 PM
To: ATG Ballot Comments
Subject: [EXT] Comment re Draft Attorney General's Statement re Sales Tax on Food and Drink
Attachments: 21025.Ltr.A.G.Vargo.pdf

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By email and U.S. Mail

Attorney General Mark Vargo
Office of the Attorney General
1302 E Hwy 14, Suite 1
Pierre SD 57501-8501

Re: Draft Attorney General's Statement re Sales Tax on Food and Drink

Dear Attorney General Vargo:

I am the attorney for Richard P. Weiland and Dakotans for Health, who submitted the proposed initiated constitutional measure and law concerning sales tax on food and drink.

On October 19, the Legislature Research Council submitted a fiscal note that accurately states that if these measures are passed, "Municipalities could still tax anything sold for eating or drinking by humans." But the draft Attorney General's Statement says that these measures prohibit "the state, *or municipalities*" (emphasis added) from collecting such taxes.

With respect, the LRC is correct. Neither proposal affects municipalities' ability to tax food and drink. Both measures say that "the *state* may not tax" (emphasis added) food and drink. The State's power to tax food and drink comes from SDCL 10-45 and 10-46. Municipalities' power to tax food and drink has a separate source: SDCL 10-52-2.

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The word "State" and the word "municipalities" have plain, common, ordinary meanings. Prohibiting the State from taxing food and drink does not limit municipalities' ability to do so.

When we submitted these measures to the LRC for its comments, the LRC did not suggest that either measure would somehow be construed to apply to municipal taxes on food and drink.

Accordingly, I request that you revise the Draft Attorney General's Statement re Sales Tax on Food and Drink so that it does not say that either measure would prohibit municipalities from taxing food and drink.

In light of the natural confusion that may result from events so far, and to eliminate any public uncertainty, I request that your final Attorney General's Statement explicitly say that neither proposal will affect municipalities' taxes on food and drink.

Respectfully submitted,

/s/ James D. Leach

James D. Leach

JDL/hs

cc: Richard P. Weiland