

STATE OF SOUTH DAKOTA



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CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

June 24, 2010

Jason E. Green
City Attorney
300 Sixth Street
Rapid City, SD 57701-2724

RE: **Refund of Application Fee**

Dear City Attorney Green:

The city council has requested a legal opinion regarding refunding development application fees paid by citizens pursuant to city ordinance. You have advised the city council that it is without authority to issue the refunds under the facts of the particular situation. I concur as a matter of law that the city lacks the legal authority under the circumstances presented to return the refunds. See generally SDCL § 9-21-3; 9-21-10.

I sympathize with the council's desire to do what is in its eyes fair and just. While it may lack the governmental authority under these circumstances to return the funds, a trial court may possess such authority. It is often recognized that "a trial court has discretion, within its broad powers of equity, to create an appropriate remedy based on the evidence presented..." See Landstrom v. Shaver, 561 N.W.2d 1, 9 (SD 1997). Longwell v. Custom Benefit Programs Midwest, Inc. 627 N.W.2d 396, 399 (SD 2001).

Accordingly, a potential solution may be for either the city or the interested parties to commence an equitable action in circuit court for the return of monies. Whether or not this is a practical and viable option is for you to evaluate.

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Please don't hesitate to contact me if you have any further questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Marty J. Jackley". The signature is fluid and cursive, with a long horizontal stroke at the end.

Marty J. Jackley
ATTORNEY GENERAL

MJJ/lde