

LETTER OPINION
2000-L-72

May 5, 2000

Mr. E. Ward Koeser
President
Board of City Commissioners
PO Box 1306
Williston, ND 58802-1306

Dear Mr. Koeser:

Thank you for your letter asking questions about the Trenton Indian Housing Authority. I apologize for the delay in responding.

City and county housing authorities may not operate "until the governing body of the city or of the county, as the case may be . . . declares that there is need for an authority to function in such city or county." N.D.C.C. § 23-11-02. You ask if this statute also gives Williston the power to decide whether the Trenton Indian Housing Authority may operate in Williston. It does not. The statute specifically states that it addresses city and county housing authorities.

Furthermore, I am unaware of any litigation in which a local government sought to stop a tribal housing authority from operating, with the exception of an Oklahoma dispute. Ponca City tried to keep the Kaw Tribe Housing Authority out of Ponca City. Housing Auth. of the Kaw Tribe v. Ponca City, 952 F.2d 1183 (10th Cir. 1991); Ponca City v. Housing Auth. of the Kaw Tribe, 840 P.2d 653 (Okla. Ct. App. 1992). The litigation, however, isn't relevant because the Kaw Tribe had established its housing authority under state law. Therefore, it was subject to state law. Id. at n.5 655 (dicta). The Trenton Indian Housing Authority was not established under state law so Ponca City is inapplicable.¹

You also ask a more general question, that is, whether the Trenton Indian Housing Authority is otherwise subject to the provisions of N.D.C.C. ch. 23-11. This chapter governs city and county housing authorities. None of the language in this chapter indicates that the Legislature intended its provisions to cover tribal housing authorities, except for their express mention in the sections exempting them from "levy and sale by virtue of an execution" and from taxation. N.D.C.C. §§ 23-11-28 and 23-11-29.

¹ Sometimes tribes even litigate among themselves the appropriate area of tribal housing operations. Sac & Fox Nation v. Cuomo, 193 F.3d 1162 (10th Cir. 1999), petition for cert. filed, (Mar. 8, 2000) (No. 99-1486).

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Your next question concerns N.D.C.C. § 40-23-08, which states:

Whenever any real property is exempt from special assessments, or cannot be assessed, as provided in this title, for any improvement for any reason, and such real property otherwise would be assessable for such improvement, an assessment may be levied against the occupant or beneficial user of the property

This statute provides for an in lieu collection method for exemptions "provided in this title." The statute is in Title 40. The tax exemption given Indian housing authorities is in Title 23. Thus, this statute isn't broad enough to allow the city to collect an assessment from the occupant of housing authority property.

Your last question asks whether Williston can limit the Trenton Indian Housing Authority's operations in the city "based upon legitimate fiscal and budget pressures and concerns." I am unaware of any basis by which the city could take such action. I assume that this question arises because of the tax exemption given by N.D.C.C. § 23-11-29. While this may cause Williston "budget pressures," tribal housing authorities are entitled to the same tax treatment as city and county housing authorities. See 1996 N.D. Op. Att'y Gen. L-138 (Oct. 23 to William Woods) (citing legislative history for N.D.C.C. § 23-11-29 that "'property under the Indian housing authority is put in the same position as city and county or political subdivisions in regard to exemption of taxes.'") Consequently, fiscal considerations, at least those arising from the statute, do not allow Williston to exclude the Trenton Indian Housing Authority from the city.

Williams County also recently asked questions about the Trenton Indian Housing Authority. Enclosed is a copy of my response to the county.

Sincerely,

Heidi Heitkamp
Attorney General

cmc/pg

Enclosure

cc: Linda Hickman, Williams County State's Attorney
Everette Enno, Chairman, Trenton Indian Service Area
John Skowronek, Special City Attorney