

**LETTER OPINION
2003-L-19**

March 19, 2003

Mr. Scott Solem
Stanton City Attorney
PO Box 249
Beulah, ND 58523

Dear Mr. Solem:

Thank you for your request for my opinion on whether the Stanton Job Development Authority (Stanton JDA) may make a particular investment. The Stanton JDA would like to “purchase a membership interest in Sakakawea Tech Center, L.L.C.” You indicate the purchase would not be an effort to create jobs in Stanton, but is instead only an investment “for which the Job Development Authority anticipates a profitable return on their money.”

Cities have only those powers expressly conferred upon them by the Legislature and those necessarily implied from the powers expressly granted. Parker Hotel Co. v. City of Grand Forks, 177 N.W.2d 764, 768 (N.D. 1970). “However, if the power is determined to exist, the rule of strict construction no longer applies and the manner and means of exercising those powers, where not prescribed by the Legislature, are left to the discretion of the municipal authorities.” Id. at 769.

As you stated in your letter, a Job Development Authority has the general power to “invest any funds held by the authority.” N.D.C.C. § 40-57.4-03(8). Whether that power is limitless is the issue.¹

Section 21-06-07, N.D.C.C., provides methods for “[c]ounties, cities, school districts, park districts, and townships” to invest their funds. Political subdivisions may also make certain investments beyond those authorized by N.D.C.C. § 21-06-07. See N.D.C.C. § 6-03-48 (FHA insured mortgages, FHA issued debentures, and securities issued by a national

¹ Given the relatively safe, conservative investments and deposits permitted by the Legislature under N.D.C.C. ch. 21-06 and 21-04 and elsewhere for political subdivision, it is very unlikely the Legislature would have intended that a city job development authority would have unlimited authority under N.D.C.C. § 40-57.4-03(8) to make any kind of investment it desired, no matter how risky or exotic. See N.D.C.C. § 1-02-39(4).

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mortgage association), N.D.C.C. § 6-09.4-15 (bonds at the municipal bond bank), N.D.C.C. § 54-30-24.1 (real estate bonds issued by the state), and N.D.C.C. § 61-02-72 (bonds issued by the water commission). None of those investment methods allow the purchasing of a membership interest in an L.L.C. N.D.C.C. § 21-06-07. Those investment options listed in N.D.C.C. § 21-06-07 are available not only to the listed political subdivisions, but also to “alter egos” of those political subdivisions. N.D.A.G. Letter to Schulz (Feb. 2, 1988). For example, this office has stated that a county library board is an alter ego of the county. Id. County libraries are, of course, created by the counties themselves.

Similarly, city JDAs are created by cities. As such, a city JDA may be termed the “alter ego” of the city that created it. Accordingly, it is my opinion city JDAs may make investments pursuant to N.D.C.C. §21-06-07. However, since the investments allowed pursuant to N.D.C.C. §21-06-07 do not include purchasing membership interests in an L.L.C., the Stanton JDA cannot purchase a membership interest in the Sakakawea Tech Center, L.L.C., as an investment.

Sincerely,

Wayne Stenehjem
Attorney General

sam/vkk