

LETTER OPINION
2003-L-24

April 4, 2003

Mr. John P. Van Grinsven III
Ward County State's Attorney
PO Box 5005
Minot, ND 58702-5005

Dear Mr. Van Grinsven:

Thank you for asking my opinion regarding a proposed joint powers agreement. The parties to the proposed agreement are the Ward County Park Board (County), the City of Kenmare (City), the Kenmare Park Board (Board), and the United States Fish and Wildlife Service (Service).

The stated purpose of the agreement is for the parties to jointly survey the Des Lacs Lakeview Road and right of way "and for the County to assist financially in such efforts." Memorandum of Understanding - II. The purpose of the survey is to determine "ownership to help secure funding for the paving of the Des Lacs Lakeview Road." Id. This road is identified in your letter as traveling along Des Lacs Lake for approximately 11 miles.

You ask specifically whether an agreement can be made under N.D.C.C. ch. 54-40.3 between political subdivisions and the federal government. The joint powers agreements statute provides, as relevant to your question, the following:

Any county, city, township, city park district, school district, or other political subdivision of this state, upon approval of its respective governing body, may enter into an agreement with any other political subdivision of this state for the cooperative or joint administration of any power or function that is authorized by law or assigned to one or more of them. . . .

N.D.C.C. § 54-40.3-01(1). Subsection 2 of section 54-40.3-01, N.D.C.C., further allows the state's political subdivisions to enter into joint powers agreements with the state.

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This particular statute provides only for joint powers agreements between political subdivisions or between political subdivisions and the state. It does not make any provision for agreements between a political subdivision and the federal government. It is my opinion that a political subdivision may not lawfully enter into an agreement with the federal government under the authority provided in N.D.C.C. § 54-40.3-01.

Although a political subdivision may not lawfully enter into an agreement with a federal agency under the authority provided in the joint powers agreements statute, the North Dakota Constitution provides “[a]greements, including those for cooperative or joint administration of any powers or functions, may be made by any political subdivision with any other political subdivision, with the state, or with the United States, unless otherwise provided by law or home rule charter.” N.D. Const. art. VII, § 10. Because your request only concerned a joint powers agreement under N.D.C.C. ch. 54-40.3, I express no opinion on whether a political subdivision can enter into an agreement with the federal government under this section or whether other statutes may limit that authority, or whether this provision requires that each entity to an agreement have independent legal authority to carry out any function imposed under it in the agreement.

Please let me know if I can be of further assistance should the County choose to pursue this, or any other option in attempting to complete the needed survey.

Sincerely,

Wayne Stenehjem
Attorney General

jrm/vkk