

**LETTER OPINION
2010-L-03**

February 12, 2010

Mr. Malcolm H. Brown
Mandan City Attorney
205 2nd Avenue NW
Mandan, ND 58554

Dear Mr. Brown:

Thank you for your letter asking whether a school district may enter into a joint powers agreement with a city in order to jointly and cooperatively exercise the city's urban renewal powers to develop real property belonging to the school district. For the reasons indicated below, it is my opinion that a school district and a city may enter into a joint powers agreement for the joint and cooperative exercise of the city's urban renewal powers under N.D.C.C. ch. 40-58 for the purpose of developing an urban renewal plan for real property belonging to the school district.

ANALYSIS

In your letter, you indicate that the Mandan Public School District No. 1 is exploring its options regarding an older unoccupied school building and related property. You indicate that outside parties have expressed an interest in rehabilitating the facilities for residential or commercial purposes and that doing so would require a significant capital investment. You further indicate that the city of Mandan and the school district are contemplating entering into a joint powers agreement.¹ The purpose of the agreement is to provide for the joint and cooperative exercise of certain urban renewal powers available to the city to develop the unused building into new residential or commercial use which would then be added to the tax rolls of the city.²

¹ You enclosed a draft Joint Powers Agreement with your letter. The second paragraph of the draft appears to contain an erroneous citation to N.D. Const. art. VIII, § 6.

² According to press accounts, a joint powers agreement would open up the available options for selling the old junior high.

School boards have certain powers under state law to acquire and dispose of real property and discontinue or liquidate assets.³ However, there are restrictions on the sale of school district property for less than fair market value.⁴

State law provides that:

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. . . . The agreement may include the provision of personnel, equipment, or property of one or more of the parties to the agreement that may be used instead of other financial support.⁵

Although there may be restrictions on the disposition of real property owned by a school district for redevelopment purposes, a city has broad authority to provide for the redevelopment of certain properties, including industrial and commercial property.⁶

Under the state's urban renewal law, a city may:

[A]uthorize or undertake and carry out development or renewal projects within its area of operation; . . . make and execute contracts and other instruments necessary or convenient to the exercise of its powers under this chapter; . . . provide, arrange, or contract for the furnishing or repair by any person or agency, public or private, of services, privileges, works, streets, roads, public utilities, or other facilities for or in connection with a development or renewal project; . . . [w]ithin its area of operation . . . organize, coordinate, and direct the administration of this chapter as those provisions apply to the municipality in order that the objectives of remedying

³ See N.D.C.C. § 15.1-09-33 (“The board of a school district may: . . . 5. Relocate or discontinue schools and liquidate the assets of the district as required by law; . . . 6. Purchase, sell, exchange, and improve real property.”).

⁴ N.D.A.G. 2000-L-13 (“a school district may not give or sell property at less than the fair market value . . . when exercising its authority under N.D.C.C. § 15.1-09-33(5) and (6), a school district must sell real property at fair market value . . .”) (citing Herr v. Rudolf, 25 N.W.2d 916 (N.D. 1947)).

⁵ N.D.C.C. § 54-40.3-01(1).

⁶ Industrial or commercial property is defined as “unused or underutilized real property that is zoned or used as an industrial or commercial site.” N.D.C.C. § 40-58-01.1(14). See generally N.D.C.C. ch. 40-58.

slum and blighted areas and preventing the causes of those areas and facilitating the development of industrial or commercial properties within the municipality may be most effectively promoted and achieved⁷

Further, a city has the powers under the urban renewal law to dispose of property in a development or renewal area:

A municipality may sell, lease, or otherwise transfer real property or any interest in real property acquired by it, and may enter into contracts with respect to the real property, in a development or renewal area for residential, recreational, commercial, industrial, or other uses or for public use, or may retain the property or interest for public use, in accordance with the development or renewal plan, subject to such covenants, conditions, and restrictions, including covenants running with the land, as it may deem to be necessary or desirable to assist in preventing the development or spread of future slums or blighted areas, to facilitate the development of industrial or commercial properties, or to otherwise carry out the purposes of this chapter; Real property acquired by a municipality which, in accordance with the provisions of the development or renewal plan, is to be transferred, must be transferred as rapidly as feasible in the public interest consistent with the carrying out of the provisions of the development or renewal plan. . . . A municipality may dispose of real property in a development or renewal area to private persons in a manner that appropriately carries out the purposes and provisions of this chapter. Thereafter, the municipality may execute the contract in accordance with the provisions of subsection 1 and deliver deeds, leases, and other instruments and take all steps necessary to effectuate the contract. . . . A municipality may temporarily operate and maintain real property acquired in a development or renewal area pending the disposition of the property for development or redevelopment, without regard to the provisions of subsection 1, for any uses and purposes as may be deemed desirable even though not in conformity with the development or renewal plan.⁸

In carrying out its powers under the urban renewal law, a city may cooperate with other public bodies, i.e., any other municipality, district, or other political subdivision⁹ such as a school district. In that vein, state law provides that:

⁷ N.D.C.C. § 40-58-07(1), (2) and (9).

⁸ N.D.C.C. § 40-58-09(1), (2), and (3).

⁹ See N.D.C.C. §§ 40-58-01.1(19) and 40-58-13.

1. For the purpose of aiding in the planning, undertaking, or carrying out of a development or renewal project located within the area in which it is authorized to act, any public body may, upon any terms, with or without consideration, as it may determine:
 - a. Dedicate, sell, convey, or lease any of its interest in any property or grant easements, licenses, or other rights or privileges therein to a municipality;

.....
 - c. Do any and all things necessary to aid or cooperate in the planning or carrying out of a development or renewal plan;

.....
 - e. Enter into agreements which may extend over any period, notwithstanding any law to the contrary with a municipality or other public body relating to action to be taken pursuant to any of the powers granted by this chapter, including the furnishing of funds or other assistance in connection with a development or renewal project; and

.....
2. Any sale, conveyance, lease, or agreement provided for in this section may be made by a public body without appraisal, public notice, advertisement, or public bidding.¹⁰

The urban renewal law also encourages the involvement of private enterprise in redevelopment projects, stating that a “municipality, to the greatest extent it determines to be feasible in carrying out this chapter, shall afford maximum opportunity, consistent with the sound needs of the municipality as a whole, to the development, rehabilitation, or redevelopment of the development or renewal area by private enterprise.”¹¹ As noted above, the ultimate object of the joint powers agreement would be to facilitate a sale of the unused school property to a private developer so that it may be converted to residential or commercial use and placed on the tax rolls for the benefit of the community.

¹⁰ N.D.C.C. § 40-58-13(1) and (2) (emphasis added).

¹¹ N.D.C.C. § 40-58-03.

Thus, under the laws of this state, urban renewal projects can be implemented between a city and another political subdivision both under the urban renewal law, N.D.C.C. ch. 40-58, as well as through a joint powers agreement under N.D.C.C. ch. 54-40.3. Under the joint powers authority of N.D.C.C. ch. 54-40.3, only one of the parties to the agreement need have the statutory authority to take the action which is the subject of the joint powers agreement.¹²

Although I am not aware of other cities and school districts entering into joint powers agreements in order to utilize the urban renewal authority of a city,¹³ this office has approved joint powers agreements between cities and school districts for a variety of other purposes.¹⁴

¹² See N.D.C.C. § 54-40.3-01(1); N.D.A.G. 2002-F-03.

¹³ Under N.D.C.C. § 54-40.3-03, political subdivisions are encouraged to file a copy of their joint powers agreements with the Advisory Commission on Intergovernmental Relations. No joint powers agreement between a city and school district to exercise urban renewal authority was found in the Commission's files. E-mail from Timothy J. Dawson, Legal Counsel to North Dakota Legislative Council, to John J. Fox, Assistant Attorney General (Jan. 21, 2010).

¹⁴ See, e.g., N.D.A.G. 2002-F-03 (“[I]f a school district intends to build a school, which is within the school district’s statutory authority, N.D.C.C. § 15.1-09-33(4), a city may enter into a joint powers agreement with the school district and cooperate by giving money to the school district to help finance the school. . . . [A] political subdivision may make a donation of public funds to another political subdivision through a joint powers agreement under N.D.C.C. ch. 54-40.3”); N.D.A.G. 2000-F-04 (“N.D.C.C. § 54-40.3-01(1) authorizes a joint powers agreement between the city and the school district to use city sales taxes to build a school. . . . The agreement may also specify the manner of acquiring, holding or disposing of real and personal property used in the cooperative undertaking. N.D.C.C. § 54-40.3-01(1)(e).”) (but see subsequently passed N.D.C.C. § 40-05.1-06.1 which limits the use of city sales taxes for the benefit of a school district); N.D.A.G. 94-F-02 (“Pursuant to N.D.C.C. § 54-40.3-01, it would be within the city’s authority to enter into a joint powers agreement with a school district in which the city agrees to jointly maintain the school buildings through providing free electricity to the school district. Thus, a city without a home rule charter may provide free electricity to a school district if such is provided for in a joint powers agreement pursuant to N.D.C.C. ch. 54-40.3.”). See also N.D.A.G. 2008-L-08 (joint powers agreement may provide the manner of holding real property used in the joint undertaking and may allow the property of one of the parties to be used instead of other financial support); and N.D.A.G. 95-L-115 (park district may enter into joint powers agreement whereby city funds may be accepted to improve properties under the exclusive authority of the park district).

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Based on the foregoing, it is my opinion that a school district and a city may enter into a joint powers agreement for the joint and cooperative exercise of the city's urban renewal powers under N.D.C.C. ch. 40-58 for the purpose of developing an urban renewal plan for real property belonging to the school district.

Sincerely,

Wayne Stenehjem
Attorney General

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This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.¹⁵

¹⁵ See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).