

**LETTER OPINION**  
**2011-L-06**

July 5, 2011

The Honorable Jerry Kelsh  
House Minority Leader  
House of Representatives  
PO Box 27  
Fullerton, ND 58441-0027

Dear Representative Kelsh:

Thank you for your letter requesting my opinion on whether money derived from dues paid by member political subdivisions can be used by the North Dakota Association of Oil and Gas Producing Counties to hire a lobbyist. Contrary to what the name suggests, you have indicated that the North Dakota Association of Oil and Gas Producing Counties consists not only of counties, but also of school districts and cities. Based on the following discussion, it is my opinion that money derived from dues paid by member counties, cities, and school districts may be used by the North Dakota Association of Oil and Gas Producing Counties to hire a lobbyist if any member county or city has home rule authority to hire a lobbyist, and if the power to hire a lobbyist falls within the powers or functions to be cooperatively or jointly administered by the counties, cities, and school districts through the North Dakota Association of Oil and Gas Producing Counties under the joint powers agreement.

**ANALYSIS**

To respond to your question, I will analyze two separate issues. The first is whether political subdivisions, i.e., counties, cities, and school districts, may pay dues to the North Dakota Association of Oil and Gas Producing Counties. The second issue is whether the Association may use those dues to hire a lobbyist.

In 1979, this office was asked whether the Dickinson Public School District could join an association of oil and gas producing counties.<sup>1</sup> The Williams County Superintendent of Schools had sent correspondence to the Dickinson Public School District, stating that the receipt of revenues from the oil and gas production taxes were in jeopardy and expressing concerns about the upcoming legislative session.<sup>2</sup> He enclosed the proposed by-laws of

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<sup>1</sup> See N.D.A.G. 79-222.

<sup>2</sup> See Memorandum from Cleo Furuseth, Williams County Superintendent of Schools, to School Administrators, and City and County Heads of Government (Oct. 30, 1978).

the association and an “Agreement for Joint Exercise of Governmental Powers.” He stated that if the school board decided to become a member, it should sign the agreement and return it, with the dues in an amount determined under the by-laws. The agreement specified that the participating counties, cities, and school districts were joining together for a list of purposes related to oil and gas development.

The 1979 Attorney General’s opinion stated that school districts were specifically authorized by law to pay dues only to 1) county or state school boards associations, and 2) the North Dakota High School Athletic Association.<sup>3</sup> Therefore, the Dickinson Public School District could not participate in the North Dakota Association of Oil and Gas Producing Counties.<sup>4</sup>

The authority for school districts to pay dues has changed since 1979. In 1999, the law was amended to provide that school boards could “[p]ay membership dues to county and state associations.”<sup>5</sup> In 2005, the law was further amended to provide that school boards could “[p]ay dues allowing for the board to hold membership in city, county, state, and national organizations and associations.”<sup>6</sup> Given these changes to the state law, school districts now have the authority to pay dues to the North Dakota Association of Oil and Gas Producing Counties.

Counties have specific authority to “expend county funds for the purpose of participating in an organization of county governments . . . .”<sup>7</sup> Similarly, cities have specific authority to “expend city funds for the purpose of participating in an organization of city governments . . . .”<sup>8</sup> Although these state laws allow a county to pay dues to an organization of county governments and a city to pay dues to an organization of city governments, they do not allow a county or city to pay dues to an organization of school districts, counties, and cities, such as the North Dakota Association of Oil and Gas Producing Counties. Although these state laws do not allow counties and cities to pay dues to the North Dakota Association of Oil and Gas Producing Counties, counties and cities could acquire the school districts’ authority to pay such dues by entering into a joint powers agreement with

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<sup>3</sup> See N.D.A.G. 79-222.

<sup>4</sup> Id.

<sup>5</sup> 1999 N.D. Sess. Laws ch. 196, § 9, codified at N.D.C.C. § 15.1-09-33(33).

<sup>6</sup> 2005 N.D. Sess. Laws ch. 157, § 1. Representative Nancy Johnson, a sponsor of H.B. 1233, provided written testimony to the House and Senate Educ. Comms., stating, “[t]here are many organizations in which it is valuable for school districts to be active participants. Some that come to mind for the Dickinson area are the . . . ND Association of Oil and Gas Producing Counties . . . .” Written testimony submitted by Rep. Nancy Johnson to House Comm. on Ed. (Jan. 17, 2005) and Senate Comm. on Ed. (Mar. 2, 2005).

<sup>7</sup> N.D.C.C. § 11-11-14(15).

<sup>8</sup> N.D.C.C. § 40-05-01(74).

one or more school districts.<sup>9</sup> Apparently, this is what the school districts, cities, and counties that are participating together as the North Dakota Association of Oil and Gas Producing Counties have done. Thus, it is my opinion that counties, cities, and school districts may pay dues to the North Dakota Association of Oil and Gas Producing Counties through a joint powers agreement.<sup>10</sup>

The next issue is whether the North Dakota Association of Oil and Gas Producing Counties can use dues paid by member political subdivisions to hire a lobbyist. A county, city, and school district may enter into a joint powers agreement “for the cooperative or joint administration of any power or function that is authorized by law or assigned to one or more of them.”<sup>11</sup> Thus, whether the North Dakota Association of Oil and Gas Producing Counties can hire a lobbyist depends on whether any of the member political subdivisions has the authority to hire a lobbyist and if that authority falls within a power or function to be administered under the joint powers agreement.

There is no state law that specifically authorizes a county, city or school district to hire a lobbyist.<sup>12</sup> There also is nothing in state law that indicates a statewide interest in limiting or prohibiting lobbying.<sup>13</sup> Thus, in my opinion any county or city with home rule authority to

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<sup>9</sup> See N.D.C.C. § 54-40.3-01(1) (political subdivisions may enter into agreements with each other “for the cooperative or joint administration of any power or function that is authorized by law or assigned to one or more of them”). In addition, a county or city that operates under a home rule charter that includes the authority to “[c]ontrol its finances and fiscal affairs,” see N.D.C.C. § 11-09.1-05(2) for counties and N.D.C.C. § 40-05.1-06(2) for cities, could determine, by passage of an ordinance, to pay dues to the North Dakota Association of Oil and Gas Producing Counties. See N.D.C.C. § 11-09.1-05 for counties and N.D.C.C. § 40-05.1-06 for cities (home rule powers to be implemented through ordinances). Cities with home rule charters that include the authority to “[c]ontrol its finances and fiscal affairs” include the cities of Dickinson and Watford City. The city of Williston’s home rule charter does not include the authority to “[c]ontrol its finances and fiscal affairs.” The only county in the western part of the state whose home rule charter includes the authority to “[c]ontrol its finances and fiscal affairs” is Ward County.

<sup>10</sup> In addition, home rule counties and cities could acquire such authority in the manner provided in footnote 9.

<sup>11</sup> N.D.C.C. § 54-40.3-01.

<sup>12</sup> See also N.D.A.G. 77-27 (a county may not expend tax money to hire a lobbyist). The Legislature did not authorize counties to acquire home rule authority until 1985, so home rule was not addressed in N.D.A.G. 77-27. See 1985 N.D. Sess. Laws ch. 152.

<sup>13</sup> See N.D.A.G. 2009-L-19 (a home rule political subdivision may not supersede state laws relating to matters of statewide concern). There is a chapter on lobbying in North Dakota law, i.e., N.D.C.C. ch. 54-05.1, but it only addresses registration of lobbyists and exempts “[a]n employee, officer, board member, volunteer, or agent of the state or its political subdivisions whether elected or appointed and whether or not compensated, who is acting in that person’s official capacity.” N.D.C.C. § 54-05.1-02(2)(c).

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“[c]ontrol its finances and fiscal affairs”<sup>14</sup> could pass an ordinance determining that it will hire a lobbyist.<sup>15</sup>

I am not aware whether any home rule county or city that is participating together with school districts in the joint powers agreement which has resulted in the North Dakota Association of Oil and Gas Producing Counties has passed an ordinance determining that it will hire a lobbyist,<sup>16</sup> and I have not reviewed the joint powers agreement to determine what powers or functions are being cooperatively or jointly administered under the joint powers agreement. These factual matters should be examined to determine whether the North Dakota Association of Oil and Gas Producing Counties may hire a lobbyist.<sup>17</sup>

In conclusion, it is my opinion that whether the North Dakota Association of Oil and Gas Producing Counties may hire a lobbyist depends on whether any member county or city has home rule authority to hire a lobbyist and if the power to hire a lobbyist falls within the powers or functions to be cooperatively or jointly administered by the counties, cities, and school districts under the joint powers agreement.

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.<sup>18</sup>

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<sup>14</sup> See N.D.C.C. § 11-09.1-05(2) for counties and N.D.C.C. § 40-05.1-06(2) for cities.

<sup>15</sup> See N.D.C.C. § 11-09.1-05 for counties and N.D.C.C. § 40-05.1-06 for cities (home rule powers to be implemented through ordinances). State law does not authorize school districts to acquire home rule authority.

<sup>16</sup> Such a home rule county or city would have to have the authority in its home rule charter to “[c]ontrol its finances and fiscal affairs,” as do Ward County or the cities of Dickinson and Watford City. See footnote 9.

<sup>17</sup> This office does not resolve questions of fact. See N.D.A.G. 2001-L-19, N.D.A.G. 97-L-177, and N.D.A.G. 95-L-121.

<sup>18</sup> See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).