

N.D.A.G. Letter to McLean (Jan. 21, 1988)

January 21, 1988

Mr. Stephen M. McLean
Oakes City Attorney
P.O. Box 20
Oakes, ND 58474

Dear Mr. McLean:

Thank you for your letter of January 6, 1988, wherein you ask whether the Oakes Industrial Development Corporation may use the Oakes City Job Development Authority's four mill levy for the purpose of paying delinquent and future real estate taxes and special assessments levied on real estate owned by the Oakes Industrial Development Corporation.

N.D.C.C. ch. 40-57.4 authorizes a city to create a job development authority for the purpose of the development of employment within the city. To fund its job development authority, a city is authorized to levy a tax not exceeding four mills. N.D.C.C. §§ 40-57.4-04, 57-15-10(28). These funds are to "be expended by the city job development authority as provided in sections 40-57.4-02 and 40-57.4-03." N.D.C.C. § 40-57.4-04.

A development corporation is organized under N.D.C.C. ch. 10-30. There is no specific language in N.D.C.C. §§ 40-57.4-02 and 40-57.4-03 authorizing a job development authority to use its funds for the purpose of paying delinquent and future real estate taxes and special assessments levied on real estate owned by a development corporation.

"The Legislature is empowered to write the rules that govern the levy of taxes, the collection thereof, and the purposes for which the resulting revenues may be expended." Dornacker v. Olson, 248 N.W.2d 844, 850 (N.D. 1976). Further, a political subdivision "may 'speak and act only in the manner and on the matters prescribed by the Legislature in statutes enacted pursuant to constitutional authority.'" Id. at 849-850. County of Stutsman v. State Historical Soc., 371 N.W.2d 321, 329 (N.D. 1985).

Therefore, it is my opinion that the Oakes Industrial Development Corporation may not use the Oakes City Job Development Authority's four mill levy for the purpose of paying delinquent and future real estate taxes and special assessments levied on real estate owned by the Oakes Industrial Development Corporation.

If you wish to discuss this matter further, please do not hesitate to contact me.

Sincerely,

Nicholas J. Spaeth

klp