

N.D.A.G. Letter to Lange (March 30, 1992)

March 30, 1992

Mr. Gregory L. Lange
City Attorney
City of Hazen
P.O. Box 488
Hazen, ND 58545

Dear Mr. Lange:

Thank you for your February 4, 1992, letter inquiring whether a municipality has authority to purchase real estate on a contract for deed. I am unable to locate any prior opinions issued by this office addressing this question.

It is well settled that cities are "agencies of the State and have only the powers expressly conferred upon them by the Legislature, or such as may be necessarily implied from the powers expressly granted." Dakota Land Company v. City of Fargo, 224 N.W.2d 810, 813 (N.D. 1974) (quoting Parker Hotel Company v. City of Grand Forks, 177 N.W.2d 764, 768 (N.D. 1970)); see also Munch v. City of Mott, 311 N.W.2d 17, 20 (N.D. 1981); Litten v. City of Fargo, 294 N.W.2d 628, 632 (N.D. 1980). The general powers granted to cities by the Legislature are found in N.D.C.C. § 40-05-01. That section provides in pertinent part:

The governing body of a municipality shall have the power:

.....

2. Finances and property. To control the finances, to make payment of its debts and expenses, to contract debts and borrow money, to establish charges for any city or other services, and to control the property of the corporation.

.....

55. Real and personal property. To acquire by lease, purchase, gift, condemnation, or other lawful means and to hold in its corporate name for use and control as provided by law, both real and personal property and easements and rights of way within or without the corporate limits for all purposes authorized by law or necessary to the exercise of any power granted.

.....

73. Contracts. To contract and be contracted with.

The above language authorizes municipalities to purchase real property by any lawful means. Purchasing real property on a contract for deed is a lawful means of purchasing real property. Thus, N.D.C.C. § 40-05-01 grants municipalities the power to purchase real estate on a contract for deed.

The legislative grant of authority for cities to acquire real property through any lawful means applies equally to home rule cities. Home rule cities are governed by the statutes applicable generally to all cities, unless the home rule city charter provides otherwise. N.D.C.C. § 40-05.1-06; see also Litten, 294 N.W.2d at 632. Home rule cities have the authority to enact ordinances regarding their power to acquire property. N.D.C.C. § 40-05.1-06(1). Thus, a home rule city has authority to limit its power to purchase property. If a home rule city includes that power in its charter, and implements an ordinance limiting its power to purchase real property, the home rule city's ordinance will control. Litten, 294 N.W.2d at 632. Otherwise, a home rule city has the same power as other cities to purchase property on a contract for deed.

In conclusion, it is my opinion that N.D.C.C. § 40-05-01 grants a city power to purchase real estate on a contract for deed. A home rule city also has power to purchase real estate on a contract for deed, unless its charter and ordinances provide otherwise.

Sincerely,

Nicholas J. Spaeth

dfm