

N.D.A.G. Letter to Moore (April 21, 1987)

April 21, 1987

Honorable Marshall W. Moore
Chairman, Political Subdivisions Committee
House of Representatives
3019 Peterson Parkway
Fargo, ND 58102

Dear Representative Moore:

Thank you for your letter of April 8, 1987, inquiring on behalf of Representative Jim Brokaw as to questions concerning park districts.

Your first question is whether a park district may obtain tax moneys which were apparently levied on its behalf by a city some 8 to 10 years ago but were never delivered to the park district. We have attempted to clarify the facts regarding this question through Representative Brokaw and his constituent. The facts as they appear to us involve a city which has levied taxes for the park district rather than the park district levying the taxes itself. From our further review of the facts, it appears that the city has levied on behalf of the park district but has not forwarded the total amount of moneys collected to the park district as a result of that levy.

In reviewing North Dakota law, there is no doubt that the responsibility for park district tax levies lies with the park district rather than the city. N.D.C.C. § 40-49-12 lists the powers of the board of park commissioners. Subsection 7 of this statute states as follows:

Levy taxes upon all the property within the district for the purpose of maintaining and improving parks, boulevards, and ways, and to defray the expenses of the district.

The authority of the park commissioners to levy the park district taxes is further supported by N.D.C.C. § 57-15-11 which states as follows:

57-15-11. PARK DISTRICT TAX LEVIES. The board of park commissioners, in levying park district taxes, shall be limited by the amount necessary to meet the appropriations included in the park district budget for the ensuing fiscal year, and to provide a reserve fund as limited in this chapter, together with a tax sufficient in amount to pay the interest on the bonded debt of the municipality and to provide a sinking fund to pay the principal at maturity.

We are unable to find any authority provided to a city to levy taxes on behalf of an established park district. Assuming that has occurred in this case, and our attempt to gather all the facts concerning this matter would so indicate, there is no legal burden upon the city to deliver those tax moneys to the park district. As such, the park district would

apparently have no legal recourse against the city for non-delivery of the portion of the tax moneys collected as a result of the city's levy as the park district should have been doing the levying rather than the city.

Your second question is whether the city may use its general fund money to help maintain and improve park properties. N.D.C.C. § 54-40-08(1) indicates that all political subdivisions of the state may enter into agreements with one another for joint or cooperative action in carrying out any function or duty which may be assigned to one or more of them. In carrying out this joint function or duty, either political subdivision may use unexpended balances of their current funds (which might include the tax moneys discussed in your letter).

Therefore, where a park district has been established, given the fact that the park district has the responsibility to maintain and improve park properties, a city and a park district may enter into a joint agreement pursuant to N.D.C.C. § 54-40-08(1) to help maintain and improve park properties. As part of the agreement reached by both governing bodies, the unexpended balances of the current funds of one or more of the parties to the agreement may be used to further the goal of the joint function or agreement.

Sincerely,

Nicholas J. Spaeth

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cc: Speaker Richard Kloubec
Representative Jim Brokaw