

N.D.A.G. Letter to Gregg (May 4, 1988)

May 4, 1988

Mr. John R. Gregg
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Dear Mr. Gregg:

Thank you for your letter of April 25, 1988, wherein you refer to my April 20, 1988, letter and ask me to review my conclusion that a special assessment levy must be terminated if the obligation is satisfied by the municipality from other resources.

You have asked for this reconsideration in view of the opinion expressed in 1987 N.D. Op. Att'y Gen. 62 "that a city can continue to certify special assessments for collection to pay for an improvement project, even though the principal and interest on debt issued for the financing of the improvement project under N.D.C.C. ch. 40-24 have been fully paid."

This opinion is based upon the provision in N.D.C.C. § 40-24-11 which authorizes special assessment certification to continue "to repay the city for any payments made by the city to fund deficiencies in the fund established pursuant to section 40-24-18."

This section must be read in harmony with N.D.C.C. § 40-24-18 which limits the use of special assessment funds and prohibits them from being diverted from their dedicated purpose. In doing so, it is clear that the above-quoted language from N.D.C.C. § 40-24-11 is intended to permit a city to be reimbursed by continuing the special assessment installments in the event that the city had to resort to other funds in order to meet the obligations created by the special assessment project. This would normally occur when a significant number of special assessment installments become delinquent, creating a cash flow problem for the special assessment district.

With that understanding, my conclusion in my April 20, 1988, letter remains valid, and it is not inconsistent with the opinion expressed in 1987 N.D. Op. Att'y Gen. 62.

Sincerely,

Nicholas J. Spaeth

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