

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

May 4, 1988

Mr. James T. Odegard
Grand Forks County State's Attorney
P.O. Box 607
Grand Forks, ND 58206-0607

Dear Mr. Odegard:

Thank you for your letter of April 26, 1988. I understand your inquiry to concern the possibility of a county contracting out privately for services in carrying out the county's statutory duties and responsibilities as opposed to the county undertaking such action through its own employees and equipment.

It is impossible to provide a definite and consistent answer to your question. There are a number of variables that would enter into such an answer. First, if the county is home rule then the charter may contain specific and definite procedures to be followed by the county in fulfilling its responsibilities. Second, in either the laws governing home rule counties (N.D.C.C. ch. 11-09.1) or the laws governing non-home rule counties (N.D.C.C. ch. 11-11), statutory language discussing the responsibility, duty, or power of the county must be examined to determine whether the county is able to fulfill its responsibilities through a private contractor.

Your letter mentions the subject of jails and regional corrections centers. N.D.C.C. § 12-44.1-02 discusses this subject and requires the county or city to establish or maintain a jail at its own expense, to contract with another city or county for jail services, or to establish a regional corrections center in conjunction with other counties and cities. The statute provides for the private contracting of juvenile detention services with a privately operated juvenile detention center only.

Clearly, the statute does not allow the "privatization" of jails or regional corrections centers with the sole exception of the juvenile detention centers. Here, the specific statute involved had to be examined to determine the answer to the question of whether a private contractor may fulfill the official responsibility provided by statute.

I am enclosing a copy of a letter opinion issued last year to the Devils Lake city attorney discussing the authority of a county to provide an exclusive franchise to a private contractor for the operation of a trash collection system within the county. The letter opinion addresses N.D.C.C. § 11-11-14(13) and examines the specific language used in that statute. Our conclusion was that the statute provided for action by the county to maintain a garbage and trash collection system and did not provide for the awarding of exclusive franchises for private contractors. Once again, the statute was examined for its specific requirements and terms to determine whether a private contractual arrangement

was permissible.

On the other hand, N.D.C.C. § 11-11-14(14) provides the county with the authority to maintain "in its discretion" all public roads and highways within a county used as part of a regularly scheduled public school bus route. Clearly, this statute provides discretion with the board as to how these roads and highways should be maintained. I see no reason why the county could not follow proper procedures in contracting with a private contractor to carry out this duty and responsibility.

I am sorry I cannot provide you with a clear and definite answer to your question. As the above examples indicate, the answer to your question depends upon the facts and circumstances of the subject matter and the applicable statutes involved. However, I do hope this information is of some help to you and the board of county commissioners for Grand Forks County.

Sincerely,

Nicholas J. Spaeth

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Enclosure