

**N.D.A.G. Letter to Fraase (May 11, 1988)**

May 11, 1988

Mr. Paul H. Fraase  
Acting City Attorney  
City of Bismarck  
221 North 5th Street  
P.O. Box 5503  
Bismarck, ND 58502

Dear Mr. Fraase:

Thank you for your letter of April 28, 1988, inquiring as to the legality of a contribution from the city of Bismarck to the Bismarck Chamber of Commerce.

Your letter mentions an annual contribution by the city of Bismarck to the Bismarck Chamber of Commerce designed to promote the work of the chamber and advertising the resources, opportunities, and industrial developments within the city of Bismarck. You inquire whether this contribution may violate N.D. Const. art. X, § 18.

The constitutional provision mentioned in your letter prohibits the state and its political subdivisions from "otherwise" loaning or giving its credit or making donations to or in aid of any individual, association, or corporation. The word "otherwise" is important within this constitutional provision. The North Dakota Supreme Court has stated that this constitutional provision does not prohibit the making of loans or the giving of credit or the making of donations in connection with a city's engaging in any industry, enterprise, or business. What it does prohibit is a city "otherwise" making such loans, giving such credit, or making such donations. In other words, making loans or giving credit may be done in connection with a city's engaging in any permissible industry, business, or enterprise, but not otherwise. Patterson v. City of Bismarck, 212 N.W.2d 374 (N.D. 1973)

N.D.C.C. § 57-15-10.1 provides that the governing body of any city may annually levy a tax for the purpose of advertising the resources and opportunities in the county or city and to promote industrial development. The amount of the tax levy may not exceed one mill. N.D.C.C. § 57-15-10(17).

Enclosed is a copy of a 1975 letter to two legislators concerning N.D.C.C. § 57-15-10.1. In this letter, this office concluded that the statute provided the city governing body with the discretion to expend the funds accumulated by N.D.C.C. § 57-15-10.1. The determination of the governing body would be subject to reversal by the court only if they violated the statutory provisions or abused their discretion. The letter further pointed out that the propriety of the purpose for which these funds were spent in a particular case was a question of fact rather than a question of law. As this office does not have the authority to determine the facts and make factual determinations, we cannot express a legal

opinion as to whether the expenditure of funds satisfies the requirements of N.D.C.C. § 57-15-10.1.

I believe the same rationale and conclusion discussed in the 1975 letter must be applied in this particular case. The constitutional provision found at N.D. Const. art. X, § 18 would not be violated by a contribution by the city of Bismarck to the Bismarck Chamber of Commerce so long as that contribution is part of the city's engagement in any permissible industry, enterprise, or business. N.D.C.C. § 57-15-10.1 provides such a basis for this activity. Whether the contribution in question is made for the purpose of advertising the resources and opportunities in the city and for promoting industrial development is a question of fact which cannot be answered by this office by the issuance of an Attorney General's opinion.

I hope this information is helpful to you in applying the necessary statutes and constitutional provisions to the applicable facts in this case.

Sincerely,

Nicholas J. Spaeth

cv  
Enclosure