

N.D.A.G. Letter to Jones (June 22, 1987)

June 22, 1987

Mr. Wayne P. Jones
Ransom County State's Attorney
P. O. Box 391
Lisbon, ND 58054

Dear Mr. Jones:

Thank you for your letter of June 2, 1987, concerning a contemplated donation by the board of county commissioners of Ransom County to be made to a fund known as "Lisbon's Future". According to statements made by your office by telephone, this fund is essentially a private fund administered by a committee comprised of public and private individuals. Although the money is held in an account by the city, the money consists of donations received by merchants and individuals seeking to further the development of the city of Lisbon.

In analyzing the contemplated donation by Ransom County to this private fund, there are two principles of law which need to be reviewed. The first principle is found in Art. VII, § 2 of the North Dakota Constitution. This constitutional provision states that political subdivisions may only exercise those authorities as provided by the legislative assembly. Thus, on the basis of Art. VII, § 2 of the North Dakota Constitution, the question is whether a city or county is authorized to engage in the questioned activity rather than whether there is some legal provision prohibiting participation by a city or a county in that activity.

The second legal principle involved is found at Art. X, § 18 of the North Dakota Constitution. In interpreting this constitutional provision, the North Dakota Supreme Court has stated that this provision allows for the making of loans, the giving of credit, or the making of a donation in connection with a county's or city's engaging in any permissible industry, enterprise, or business. Where the county or the city is not engaging in a permissible industry, enterprise, or business, then the loaning of its money, the giving of its credit, or the making of donations in aid of any individual, association or corporation, except for the reasonable support of the poor, may not occur. Patterson v. City of Bismarck, 212 N.W.2d 374 (N.D. 1973); Gripentrog v. City of Wahpeton, 126 N.W.2d 230 (N.D. 1964); Bell Telephone Co. v. Wentz, 103 N.W.2d 245 (N.D. 1960).

Your first question is whether the board of county commissioners for Ransom County is able to provide a donation to the fund known as "Lisbon's Future". We have reviewed applicable statutes attempting to locate some authority for a county engaging in the business, enterprise, or industry of promoting business development in a city located within the county. N.D.C.C. ch. 11-11.1 provides for the establishment of job development authorities and industrial development organizations within counties.

However, our information indicates that "Lisbon's Future" was not established pursuant to this statutory authority.

We are unable to find any general authority for a county to engage in general business or industrial development or promotion activities, except for N.D.C.C. ch. 11-11.1. As there appears to be no authority for a county to make such a donation to a private association, the contemplated donation does not fall within one of the specified powers of the county as provided for by the legislature. Furthermore, the contemplated donation may violate the provisions of Art. X, § 18 of the North Dakota Constitution. For these reasons, I agree with your conclusion that there appears to be no statutory authority whereby a transfer of funds by way of a donation to the "Lisbon's Future" fund may occur.

Your second question is whether there is some method whereby the county and city may agree to share expenses or the salary of an individual who may be hired to promote the business environment within both the city and the county. N.D.C.C. § 54-40-08(l) allows political subdivisions of this state to agree for joint or cooperative action in carrying out any function or duty authorized by law or assigned to one or more of them. A political subdivision which is a party to such an agreement may expend its own money and contribute its own property in jointly and cooperatively carrying out the function or duty listed in the agreement.

Based upon N.D.C.C. § 54-40-08(l), it is clear that the city and county may agree to carry out jointly a duty or function which is authorized by law or assigned to either one of the parties to the agreement and that the funds of either the city or the county may be expended in carrying out this cooperative agreement. However, the problem is identifying the function or duty which is authorized by law or assigned to one or more of the parties to the agreement. We are unable to locate any authority for either the city or the county to take whatever steps are necessary to promote and encourage business development within a city or a county except for those provisions found at N.D.C.C. ch. 11-11.1 dealing with job and industrial development authorities. If a county establishes a job or industrial development authority pursuant to N.D.C.C. ch. 11-11.1, a city may jointly participate with the county in that activity, including the hiring of a business promoter, pursuant to N.D.C.C. § 54-40-08(l).

In summary, political subdivisions may enter into agreements by which they may jointly and cooperatively carry out a function or duty assigned to one or more of the parties to the agreement. As part of this agreement, the funds and property of any political subdivision which is a party to the agreement may be expended in carrying out the joint objective. However, the agreement must address and carry out some function or duty which is authorized by law or assigned to one or more of the political subdivisions who are parties to the agreement.

Sincerely,

Nicholas J. Spaeth