

N.D.A.G. Letter to Carlisle (July 8, 1991)

July 8, 1991

Honorable Ron Carlisle
State Representative
P.O. Box 222
Bismarck, ND 58502-0222

Dear Representative Carlisle:

Thank you for your June 21, 1991, letter asking for an opinion as to whether it is legal for a municipal agency which receives monies from a gaming operation to use those funds for the purchase of goods or services without having to put the purchase out on bids in a public bidding process.

Most often municipalities receive proceeds from gaming activity from organizations eligible to conduct games of chance under N.D.C.C. ch. 53-06.1 pursuant to state and/or local gaming licenses. N.D.C.C. § 21-04-01(5) provides that public funds include "all funds from whatever source derived and for whatever purpose to be expended of which a public corporation or the state shall have legal custody." Thus, proceeds from gaming activities received by a municipality are public funds.

Your letter is unclear about the exact source of the gaming funds. Most often municipalities receive gaming funds from properly licensed eligible gaming organizations. Upon receipt of these funds, there is no question that such funds are public funds. You state, however, that the municipal department received funds through its own charitable gaming activity. The person that contacted you for this opinion believes that these funds may be used to purchase goods or services without going through a public bidding process because the funds were not tax generated revenues.

The main concern raised by your letter is the possibility that the municipal department is conducting gaming activity. Only organizations defined by the Legislative Assembly as eligible to conduct games of chance may obtain a state and/or local license to conduct games of chance. N.D.C.C. ch. 53-06.1. I contacted the Gaming Section of this office and was advised that no state license has been issued to any municipal department for the purpose of conducting gaming activity. In fact, requests to the Gaming Section for the issuance of a state license to a municipal department have been turned down in the past because the department would not meet the definition of an "eligible organization" qualified by law to conduct games of chance.

If the municipal department has been lawfully operating a game of chance pursuant to a local license and these games of chance are under the supervision and control of city officials or employees, funds derived from the games of chance would be public funds subject to the receipt and disbursement provisions of the constitution and laws of this state.

Whether the proceeds from the gaming activity were derived from the municipality's own gaming operation or through donations from an otherwise eligible gaming organization would make no difference as to the status of these proceeds as public funds, regardless of the amount of proceeds.

In your letter, you indicate the municipal agency plans to spend less than \$2,000 for a single item. Bidding requirements mandated by state law vary depending upon the nature of the purchase. However, I am not aware of a bidding requirement imposed by state law with respect to purchase of equipment or supplies of \$2,000 or less by any municipality. On the other hand, municipalities are free to enact ordinances or rules governing bidding requirements. See N.D.C.C. § 40-05-01(52) (city bidding ordinances for supplies authorized). Furthermore, this office has consistently encouraged adoption of policies favoring competitive bids for public purchases.

Municipal ordinance provisions of the specific city may be applicable to receipt, retention, and disbursement of these funds. I strongly suggest that your constituent consult the attorney for the municipality in question. That attorney is in the best position to advise the municipal department as to specific policies, procedures, and requirements imposed by municipal ordinance and the municipality's governing board concerning these funds.

Sincerely,

Nicholas J. Spaeth

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