

N.D.A.G. Letter to Enget (Sep. 23, 1986)

September 23, 1986

Mr. Wade Enget
Tioga City Attorney
P. O. Box 369
Stanley, ND 58784

Dear Mr. Enget:

Thank you for your letter of September 3, 1986, concerning actions taken by the cities of Ray and Tioga, forming a corporation for the purpose of distributing water for use in both cities. According to your letter, the formation of the corporation and the apparent purchase of water by the cities from this corporation has occurred pursuant to N.D.C.C. § 40-33-16.

This particular statute authorizes cities, whose water supply is unsuitable or inadequate, to contract for the purchase of water for public purposes from any person, firm, or public or private corporation able to furnish such water. Pursuant to this statute, any contract entered into by such a city must be authorized by an ordinance submitted to the voters for approval by a majority of those voting on the proposition before it takes effect. Your letter indicates that the ordinance procedure was not followed in the case involving the cities of Ray and Tioga.

Where these cities have attempted to utilize N.D.C.C. § 40-33-16 and have yet to comply with all the requirements of the statute, the action of the cities is subject to challenge in a court of law. For these cities to continue to purchase water from this corporation without an attempt to have the voters ratify what has occurred continues to subject such action to court challenge. If it is the intent of the cities to utilize N.D.C.C. §40-33-16, I recommend that the matter be submitted to the voters as required by the statute.

However, if it is the intent of the cities to jointly exercise governmental powers, pursuant to N.D.C.C. § 54-40-08, there is no requirement to submit a joint function arrangement or agreement to the voters for approval. N.D.C.C. §54-40-08(1) authorizes cities, upon approval of the respective governing bodies, to enter into agreements with one another for joint or cooperative action in carrying out any function or duty authorized by law to said cities. The supply of water to the citizens of a city would be such a function capable of joint exercise by two or more cities pursuant to this statute.

Obviously, I am not in the position to determine the basis for the action which has occurred in the purchase of water by these two cities. Instead, I must defer determination of which statute has been or was intended to be followed by the cities to those who have the specific knowledge of the facts and circumstances of this case. However, I am confident that both of these statutes are available to both cities in attempting to provide suitable and adequate water to its citizens.

Sincerely,

Nicholas J. Spaeth

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