

N.D.A.G. Letter to Isakson (Sep. 29, 1992)

September 29, 1992

Mr. Charles R. Isakson
Mercer County State's Attorney
P.O. Box 39
Stanton, ND 58571

Dear Mr. Isakson:

Thank you for your June 16, 1992, letter asking whether a political subdivision may make a donation to a private local hospital without specific or implied statutory authority to do so, if the donation can be attributed to be for reasonable support of the poor pursuant to N.D. Const. art. X, § 18.

The North Dakota Constitution states:

Section 18. The state, any county or city may make internal improvements and may engage in any industry, enterprise or business . . . but neither the state nor any political subdivision thereof shall otherwise loan or give its credit or make donations to or in aid of any individual, association or corporation except for reasonable support of the poor, nor subscribe to or become the owner of capital stock in any association or corporation.

N.D. Const. art. X, § 18. The North Dakota Constitution also states: "[t]he legislative assembly shall provide by law for the establishment and the government of all political subdivisions. Each political subdivision shall have and exercise such powers as provided by law." N.D. Const. art. VII, § 2.

In an April 7, 1992, opinion, I concluded that N.D. Const. art. X, § 18 does not prohibit a loan or a grant from a city to a school district because a school district is not a private individual, association, or corporation as those terms are used in N.D. Const. art. X, § 18. Letter from Attorney General Nicholas J. Spaeth to Mayor Eugene Belisle (April 7, 1992). I also stated in that opinion that the authority of a political subdivision to loan or give money to another political subdivision must be derived from a statute which specifically confers the authority, or from which the authority can be necessarily implied. I concluded that "a city may not lawfully loan or give money to a school district because there is no specific statutory authority nor any statute from which authority can be necessarily implied for a city to loan or give money to a school district." Belisle, at 3-4. The Belisle opinion clarifies an opinion issued November 15, 1991, to State's Attorney Phyllis Ratcliffe, which expressed uncertainty over the need for specific statutory authority, or a statute from which that

authority can be necessarily implied. See letter from Attorney General Nicholas J. Spaeth to State's Attorney Phyllis Ratcliffe (November 15, 1991).

Consistent with my opinion to Mayor Belisle, it is my opinion that a political subdivision may not make a donation to a private local hospital without specific statutory authority or a statute from which that authority can be necessarily implied. Even though a political subdivision may give donations for support of the poor without engaging in an industry, business, or enterprise under N.D. Const. art. X, § 18, N.D. Const. art. VII, § 2 requires specific statutory authority, or a statute from which that authority can be necessarily implied before such donations may be made. Merely construing a donation to a private hospital as one that can be attributed to be for the reasonable support of the poor is not a sufficient basis upon which to make such a donation.

Sincerely,

Nicholas J. Spaeth

las/pg