

OPINION
64-49 (May 12)

May 12, 1964 (OPINION)

CITIES

RE: Municipal Band

This is in reply to your letter of May 8, 1964, relative to the band levy authorized by chapter 40-37 of the North Dakota Century Code.

You state the voters of the city of Williston have authorized such a levy. The proceeds of this levy are being used to support the Williston City Band and the Williston Public School Band. The American Legion Drum and Bugle Corps in the city of Williston has requested that a portion of the proceeds of the one mill levy be used to defray a portion of its expenses. You note that section 40-37-01 of the North Dakota Century Code provides that a municipality may levy a tax annually for the purpose of providing a fund for the maintenance or improvement of a band for municipal purposes. You ask whether the American Legion Drum and Bugle Corps can qualify for a portion of the proceeds of the levy.

The term "a band for municipal purposes" is subject to many meanings. There are probably very few municipal bands as such in the state. Most of the bands for "municipal purposes" are local school bands, lodge bands, etc. We believe any band which agrees to perform at municipal functions upon the request of the city governing body or some other authorized city official can be considered a "band for municipal purposes" within the meaning of chapter 40-37 of the North Dakota Century Code. Thus the school band is not really a municipal band. It is financed by a public corporation but such corporation is a separate legal entity from the city municipal corporation although both political subdivisions incorporate a portion of the same territory.

It is our opinion that the city may allot a portion of the band levy to the Drum and Bugle Corps if this organization agrees to perform at municipal functions, etc. The details of such agreement must be established by the city governing body and the American Legion. We do not believe, however, that the city can make an outright donation to the Drum and Bugle Corps. If a portion of the band levy is to be allotted to the Drum and Bugle Corps it must be allotted on the basis of an agreement of the Drum and Bugle Corps to perform at municipal functions.

HELGI JOHANNESON

Attorney General