

**OPINION  
65-34**

September 16, 1965 (OPINION)

Mr. George T. Dynes

City Attorney

Dickinson, North Dakota

RE: Cities and Villages - Lease of Golf Course - Expenditures of  
Public Funds

This is in reply to your letter requesting an opinion of this office with regard to the legality of payment of certain funds by your city towards the maintenance and operation of a golf course.

The city apparently owns the nine hold golf course on which is situated appropriate club house, pro shop, etc. The city leases same to an incorporated country club which is a private nonprofit corporation. The total annual budget of the entire operation including club house runs around \$30,000.00, most of which is raised from membership fees, greens fees, bar income and various social functions carried on thereat. The city, however, has for the past several years budgeted for and paid to the country club corporation the additional sum of \$3,000.00 to keep the operation going. All of the income received by the incorporated country club is expended by it to maintain and operate the golf course, club house and other buildings situated on the property. You enclose a copy of the lease which gives a general outline of the method by which the arrangement is run. From a reading of its terms it would appear that the project is quite closely supervised by the official city government.

You state that the basic question that the Commission has instructed you to direct to our office is "Whether or not the \$3,000.00 annual expenditure is a legal use of general municipal funds in view of the fact that the money is not expended directly by the city but paid over to this private corporation which in turn is obligated to expend it for the maintenance and operation of the municipal golf course.

We might mention that maintenance of golf courses is not specifically within the common law concept of a municipality nor is it within the statutory powers granted to municipalities or cities. We note that subsection 9 of Section 40-05-01 of the North Dakota Century Code does give the governing body of a municipality "the same powers as are granted to a board of park commissioners respecting the parks of the municipality, if any until the municipality has been organized into a park district." We note further that golf courses have been held to be "Parks," see *West v. Lake Place*, 97 Fla. 127, 120 So. 361, *Bolick v. State*, 95 Fla. 982, 117 So. 387, and *Booth v. Minneapolis*, 163 Minn. 223, 203 N.W. 625, and that golf links have been held to be a "public utility," *Capen v. City of Portland*, 228 Pac. 105, 35 A.L.R. 589; however, it would appear that your city has already been organized into a park district. To date it would appear that this particular project has been strictly a city project as

opposed to a park district project.

The only other basis for city participation in such a project would be Chapter 40-55 of the North Dakota Century Code, which chapter authorizes municipalities to provide, maintain and conduct playgrounds, community centers, recreation centers, and other recreational and character building areas, structures, facilities, and activities. It is therefore our opinion that the general authority herein contained is broad enough to authorize a project such as a golf course.

We note also that Section 40-55-03 of the North Dakota Century Code specifically authorizes the governing body concerned to employ "play leaders, playground and recreation centers directors, supervisors, recreation superintendents and such other employees as they deem proper."

We see no reason why a corporate entity could not qualify as such "other employee" as the city governing body deems proper.

To conclude, it is our opinion, particularly in view of the fact that the corporate budget is approved by the city, that expenditures of the corporate entity must be made in accordance with such budget under the terms of the so-called "lease". While this agreement could perhaps be more artfully drawn to fully comply with the provisions of Chapter 40-55 of the North Dakota Century Code, the project outlined in such lease can be fully carried on under such chapter in substantially the terms provided in that form of lease.

HELGI JOHANNESON

Attorney General