

**OPINION  
65-43**

October 5, 1965            (OPINION)

Mr. Roy A. Neste

City Attorney

Park River, North Dakota

RE: Cities and Villages - Public Buildings - Lease

This is in response to your letter in which you ask for an opinion on the legality of the following proposal:

A Curling Club, a private corporation, plans to construct a building on its own lots and after completion of same, it intends to sell it to the city at a price of \$25,000.00. The value of the building is approximately \$75,000.00. The corporation would retain the use of the building for winter months only. The city could use the building at other times for recreation, banquets, meeting room, fair display, Boy Scout activities, etc.

You also advise that this procedure would result in a huge saving to the city. The corporation would pay for the maintenance and all expenses during the winter months, and the city would pay the expenses the rest of the time.

You then ask if the city has the legal authority to enter into agreement to purchase said building and, in turn, give a lease to the corporation as indicated above for certain limited uses during certain portions of the year.

Section 50-05-01(55) grants authority to the city to purchase both personal and real property for all purposes authorized by law or necessary to exercise a power granted. Section 50-05-01(56) grants authority to the city to lease personal and real property as provided by Title 40. The phrase as provided by this title apparently refers to the mechanics in which a lease, transfer, or sale of property is to be accomplished. Even if no specific authority is contained in Title 40 as to the transfer or sale or lease of real property, section 40-08-06 specifically authorizes the governing body of a city to lease a public building for any legal purpose and fix proper rentals and fees for such use. It further provides that the city shall give equal opportunity to all persons and organizations to use such building. Section 48-08-07 limits the lease of any building to one year, except as otherwise provided by city ordinance. Under Chapter 40-55 cities are authorized to provide for public recreational systems and further to purchase buildings. Section 40-11-04 provides that the transfer of real property may be accomplished by a village or council system of government by a two-thirds vote of the membership of the governing body. Cities operating under a different form of government, such as the commission, by inference may accomplish a transfer of real property by a majority vote, unless the ordinance otherwise specifies.

From the foregoing provisions, it appears that the city has adequate legal authority to purchase said building from the Curling Club, a private corporation. Allowing the city to purchase the building, to be worth \$75,000.000, for \$25,000.000 would be adequate consideration for permitting the corporation to use said building during "the winter months." To accomplish this and to meet the statutory provisions of section 48-08-07, an ordinance might have to be adopted.

In conclusion, it is our opinion that the city has the authority to enter into the proposed plan and to carry out same if the procedures provided by law are followed.

HELGI JOHANNESON

Attorney General