

**OPINION  
65-50**

April 28, 1965 (OPINION)

Mr. Donald L. Mushik, Acting Director

North Dakota Civil Defense

RE: Civil Defense - Political Subdivisions - Contracts and Funds

This is in reply to your letter of April 23, 1965 in regard to Chapter 37-17 of the North Dakota Century Code and civil defense projects of local political subdivisions of this state.

You inform us that the typical political subdivision civil defense transaction is initiated by the local Civil Defense Agency determining that a need for certain equipment has arisen. The subdivision next notifies the state office of its need and, at about the same time, a vendor is contacted and state approval of the project initiated, subject to federal approval of the particular project. When federal and state governmental approval is granted, the local subdivision enters into a contract to purchase with the vendor, conditioned on the receipt of federal matching funds, with or without bids as the case may be. Then a local warrant is prepared at the local subdivision level for fifty per cent of the total cost of the approved project. The warrant is then held until the local subdivision is notified by the federal and state authorities that federal matching funds have been advanced and are on deposit at the state level, with said funds being deposited in the Bank of North Dakota in a special fund, and with the State Treasurer being notified as to the deposit of such funds. At that time, the local warrant is then processed in the amount of fifty per cent of the total amount of the project and the state office then matches the local funds with the federal funds by making a draft against the federal advances and, subsequently, the vendor is paid in the full amount of the particular project.

Your first question is stated as:

Question No. 1. Does the act of a political subdivision in executing a contract to purchase equipment, supplies, and material for Civil Defense purposes, when such purchases are made on the condition that fifty percent federal matching funds are, and will be made available, and thereafter in obligating by local warrant, funds designated for local Civil Defense purposes constitute an obligation, expenditure, or indebtedness in contravention of any state statute?"

We know of no state statute specifically prohibiting such a transaction. Assuming that current funds of the political subdivision are, or will be, available in the treasury of the political subdivision to meet its share of the obligation as of the time of completion of the purchase, and assuming further that the basic transactions are within the authorized corporate purposes of the political subdivision, we believe that same will be legal, valid and binding transactions of the political subdivision concerned.

Your second question is stated as:

Question No. 2. Further, in view of Sections 37-17-05 and 37-17-12, does such an expenditure constitute a violation of Section 37-17-05 at subsection 3 thereof, when such transaction is made subsequent to a federal obligation having been made which guarantees matching funds not to exceed fifty percent of the total expenditure, to be paid upon presentation to the federal government of a bill or statement for the local expenditure?"

Such an expenditure, as such, does not constitute a violation of subsection 3 of section 37-17-05 of the 1963 Supplement to the North Dakota Century Code.

To conclude, we find nothing inherently improper about either of the two examples given in the hypothetical questions asked. It is possible that other factors might enter in, such as for example, the expenditure might be in excess of locally appropriated funds (within the amount of funds locally expended), there might be fraud involved, there might be improprieties in the procedures of drawing the local warrants, etc., which might vitiate a particular transaction; however, the hypothetical examples given are not improper or illegal when considered solely on the factual basis given.

HELGI JOHANNESON

Attorney General