

OPINION  
66-83

March 7, 1966 (OPINION)

Mr. Calvin A. Calton

State's Attorney

Divide County

RE: Counties - Taxation - Nonprofit Nursing Home

This is in reply to your letter of February 28, 1966, in which you set forth the following questions:

"May a county legally levy for the purpose of raising revenue, which revenue would be given to a private nonprofit corporation for the purpose of building a nursing home in the county? Such nursing home would be privately owned and operated although for all practical purposes would be open to members of the public. Would such be allowable upon the theory of attracting industry into the county?

"Would any different rules apply to a city wishing to do the same thing?"

We have examined the statutes of North Dakota and are unable to find any statutes which would authorize a levy for the purposes outlined in the above questions. The powers of counties and cities are specified by the legislature and, in the absence of any statutes authorizing such procedure, we must conclude the counties and cities do not have such authority. We do not believe the donation to a nursing home can be considered a function of county or city government in the absence of legislation, particularly where the nursing home is to be operated by a private entity, even though it be a nonprofit corporation.

While the establishment of such a nursing home in the county might well attract a certain amount of industry into the county, it does not appear this would be the primary purpose of establishment of same. In addition we have been unable to find any statute authorizing a county or city to expend public moneys for the sole purpose of attracting industry into the county except as authorized by section 57-15-10.1 of the North Dakota Century Code authorizing counties and cities to levy for advertising purposes.

We must also note the provisions of section 185 of the North Dakota Constitution which provides:

"The state, any county or city may make internal improvements and may engage in any industry, enterprise or business, not prohibited by article XX of the constitution, 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."

The donation of tax moneys by a county or city to a private nonprofit corporation for the purpose of building a nursing home in the county would, in our opinion, be a violation of section 185 of the North Dakota Constitution.

HELGI JOHANNESON

Attorney General