OPINION
69-112

October 13, 1969 (OPINION)

Mr. Michael E. Zainhofsky

Acting State Director

State Economic Opportunity Office

RE: Counties - Economic Opportunity Act - Authority

This is in response to your request for an opinion as to whether a political subdivision, specifically County Board of Commissioners or City Commission, is eligible to designate itself as a Community Action Agency under the requirements of Public Law 90-222, Economic Opportunity Act of 1964, as amended.

Your letter states that: "This opinion is being requested as if they wish to designate themselves as a prime sponsor for a Community Action Agency they are required to be recognized by the Office of Economic Opportunity and have the legal authority under state and local law to (1) conduct a Community Action Program; (2) contract with and delegate to public or private organizations (including religious organizations) the operation of programs; (3) five preference to the employment of poor people and person over 55 years of age; (4) receive, administer and transfer funds."

Your letter further states that you are enclosing a copy of Public Law 90-222 which authorizes the establishment of Community Action Agencies and Community Action Programs and the applicable sections are found under Title II, Part A, Sections 210, 211, 212, 213, 221, 222, 223, 224 and 225.

We do not find a copy of said Public Law 90 222 enclosed with your letter. In our office, however, we assume by these references you refer to that part of said Public Law 90-222 as found in U.S. Code Congressional and Administrative News 90th Congress, First Session 1967, Volume 2, pages 766 through 781, and as same is codified, Chapter 34, subchapter II, Part A, Title 42 U.S.C.A. or more specifically Sections 2790, 2791, 2795, 2796, 2808, 2809, 2810, 2811 and 2812 of Title 42 U.S.C.A., 1969 Cumulative Annual Pocket Part Supplement.

The interpretation of the Federal Act would in the first instance be the responsibility of the Federal Agency or Agencies involved. This office will not in this context attempt to put forward its construction of the Federal statutory provisions. Our comments herein are meant only to construe the applicable state law, as we would envision its coordination with the federal enactments. In this context we might mention also the specific provision of subdivision (a) (2) of Section 2790 of Title 42 U.S.C.A. (Sec. 210 (a) (2) P.L. 90-222 to the effect that:

> "2790. DESIGNATION OF COMMUNITY ACTION AGENCIES - POLITICAL SUBDIVISIONS, PUBLIC AND PRIVATE NONPROFIT AGENCIES AND

ORGANIZATIONS.

a) A community action agency shall be a State or political subdivision of a State (having elected or duly appointed governing officials), * * *

2) is determined to be capable of planning, conducting, administering and evaluating a community action program and is currently designated as a community action agency by the Director.

* * *." (deletions and emphasis supplied by us.)

Generally speaking, in the context of the state law "political subdivisions" are considered to be such subdivisions of the state as counties. Cities and (formerly) villages are considered to be "municipal corporations" where the strictest definitions are applied. In a broader sense and for particular purposes counties, townships, school districts, cities, etc., may properly be considered to be political subdivisions of the state.

In the context of this enactment we would see no difficulty in construing cities of this state to be for purposes of this enactment "political subdivisions" of the state. In this regard we note that 42 U.S.C.A., Section 2790, subdivision (c), (Sec. 210 (c) P.L. 90-222) provides in part:

c) For the purpose of this subchapter, a community may be a city, county, multicity or multicounty unit, an Indian reservation, or a neighborhood or other area * * *."

From the context of the federal enactment we would assume that the political subdivision itself, rather than its governing body, would be designated as the community action agency, although as a practical matter a great deal of the activity of the political subdivision is handled by the governing body thereof or by agencies or departments thereof.

At this point we might mention the provision of section 40-05-01, subsection 73 of the 1969 Supplement to the North Dakota Century Code which provides in part:

"POWERS OF ALL MUNICIPALITIES. The governing body of a municipality shall have the power:

* * *

73. CONTRACTING. To contract and be contracted with."

And the provision in section 11-10-01 of the North Dakota Century Code providing in part:

"COUNTY A CORPORATE BODY - POWERS. Each organized county is a body corporate for civil and political purposes only. As such, the county may * * * contract and be contracted with, * * *."

The contracting power thus recognized in cities and counties of this

state must necessarily be considered in the context in which it is granted, i.e., that they are created for the specific purpose of local government. The creation by state legislative enactment antedates the enactment of Public Law 90-222 and thus there are no specific statutory provisions for operations under this enactment, though we would assume generally that their powers are broad enough to take an active part in the programs thus established. None of the purposes enumerated in the statutory provisions you cited, as we would understand their meaning, would appear to the ultra vires to the purpose of creation of these local governmental subdivisions.

We note that the term community action program is in effect defined in Section 2790 (a) U.S.C.A., Title 42, (P.L. 90-222 Section 210 (a) as:

> "A community action program is a community based and operated program
>
> 1) which includes or is designed to include a sufficient number of projects or components to provide, in sum, a range of services and activities having a measurable and potentially major impact on causes of poverty in the community or those areas of the community where poverty is a particularly acute problem;
>
> 2) which has been developed, and which organizes and combines its component projects and activities, in a manner appropriate to carry out all the purposes of this subchapter; and
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> 3) which conforms to such other supplementary criteria as the Director may prescribe consistent with the purposes and provisions of this subchapter."

We might generally mention that counties of this state have for a great length of time directly and through the county welfare boards thereof taken a very active part in public welfare programs. Reasonable support of the poor has long been recognized as an exception to various limitations on the powers of the state and its political subdivisions in North Dakota. Thus for example Section 185 of the North Dakota Constitution 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."

In recent years Urban Renewal, (See chapter 40-58 of the North Dakota Century Code), and Industrial Development Legislation (See chapter 40-57 of the North Dakota Century Code), have been enacted to enable cities to take more direct action in the elimination of what certainly could be recognized as poverty factors.

Looking to the specific items you mention, we would see no substantial problem with the legal authority of North Dakota counties and cities to conduct a "Community Action Program" within the scope of their general powers and authority, though of course it seems possible that further definition of that term by the director of the federal program could include specific activities that might be beyond the general scope of their present function. We have previously cited their general statutory authority to enter into contracts. In proper instances this could and in proper instances does constitute delegation of substantial authority to other individuals and organizations. Section 4 of the North Dakota Constitution does provide for the free exercise and enjoyment of religious profession and worship without discrimination or preference; however, we do not feel that this necessarily establishes any greater restrictions on the power of North Dakota counties and cites to contract with or delegate authority to religious organizations than is generally imposed on federal agencies through the federal constitution. The current statutes of North Dakota do not specifically provide for employment preferences to poor people and persons over 55 years of age by its counties and cities, and political subdivisions undoubtedly do have a responsibility to obtain the best available services for the local tax moneys expended for their purposes; however, we would assume that in many instances current activities of counties and cities do have an effect similar to that intended under these provisions of the federal enactment. In activities conducted strictly for the purposes of a community action program the definition of which has heretofore been considered, we would see no substantial problem in conforming to using standards of employment preferences. Both counties and cities of this state have preexisting financial and fiscal programs, treasurers and auditors, handling public moneys properly allocated to such cities and counties and the programs thereof, which currently involves receiving, administering and transferring of such funds. We would see no substantial difficulty in the receipt, administration or transfer of funds under the programs mentioned in your letter, though it would be advisable to keep such funds separate from local tax funds administered by such counties and cities.

There may, of course, be problem areas, in specific instances under the federal program, which are not met by current legislation; however, generally speaking, we would feel that North Dakota counties and cities, through their governing bodies would be eligible to designate themselves as Community Action Agencies under the requirements of the federal enactments herein considered. We would assume that in the usual instance such designation would be made by the board of county commissioners in the case of counties, and through the city council or city commission in the case of cities.

HELGI JOHANNESON

Attorney General