

**OPINION
70-245**

November 30, 1970 (OPINION)

The Honorable Earl S. Strinden

Representative

Grand Forks, ND

RE: Municipal Industrial Development Act - Health Facilities - Autho
Project

This is in response to your letter in which you mention that some local legislators met with hospital officials and discussed ways and means of providing hospital services. Plans were discussed for a new hospital and the question arose whether or not the provisions of Chapter 40-57 would be applicable and available to the city of Grand Forks.

You specifically ask for an opinion whether or not the Municipal Industrial Development Act, Chapter 40-57, would have application to hospital, health and medical facilities.

Section 40-57-02 defines projects and states the types of programs included in the Municipal Industrial Development Act. It provides as follows:

40-57-02. 'PROJECTS' AND 'MUNICIPALITIES' DEFINED. As used in this chapter, unless a different meaning clearly appears from the context, the term 'municipality' shall include counties as well as municipalities of the types listed in section 40-01-01, subsection 1, and the term 'project' shall mean any real property, buildings and improvements on real property or the buildings thereon, and any equipment located on such real property or in such buildings, or elsewhere, or personal property which is used or useful in connection with the revenue producing enterprises, or any combination of two or more enterprises, engaged or to be engaged in:

1. Assembling, fabricating, manufacturing, mixing, or processing of any agricultural, mineral, or manufactured products, or any combination thereof.
2. Storing, warehousing, distributing, or selling any products of agriculture, mining, or manufacture.
3. Any other industry or business not prohibited by the constitution or laws of the state of North Dakota."

Initially the act was enacted without the provisions of subsection 3. Subsection 3 became part of the act through Chapter 294 of the 1965 Session Laws. The critical language to determine whether or not hospital, health, and medical facilities comes within the act is found in subsection 3. When the legislature adopted subsection 3, it

clearly intended to place no limitation except as to such industry or business prohibited by the Constitution or laws of the state of North Dakota.

The provisions of subsection 3 authorize any business or industry except that which is prohibited by the Constitution or the laws of the state of North Dakota. The qualification requires an examination of the various statutes and constitutional provisions to find out if there is any constitutional or statutory provision which prohibits the operation of any hospital, health, or medical facilities. Such facilities are licensed and regulated but they are not prohibited.

By way of comparison, section 185 of the North Dakota Constitution provides as follows:

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." (emphasis ours)

The underscored language is the language which is of significance to the question under consideration. This has specific limitation whereas subsection 3 of section 40-57-02 has a general limitation. In this respect, it is interesting to note the discussion by the court in Egbert v. Dunseith in 74 N.D. 1, 24 N.W.2d. 907, where the court said:

"The amendment (to 185) was permissive in its nature. It excepted and excluded from this permission only one business: the liquor business. It did not denominate that business in those words but designated it by particular and specific reference to Article 20 of the constitution which pertained solely to that business. There can be no question but that when the people adopted the amendment they intended the business prohibited by Article 20 was the one business in which the state, its counties and its cities might not engage."

From the above statements, it becomes clear that the language employed in subsection 3 includes all types of business or industries. There is no specific limitation as found in section 185 of the North Dakota Constitution.

There is, however, one other provision to be taken into account. Section 40-57-02 also provides that:

" * * * In no event, however, shall the term 'project' include those undertakings defined in Chapter 40-35."

Upon examination of Chapter 40-35 we find that the undertakings of all projects defined therein do not include hospital, health or medical facilities. Consequently, the provisions of Chapter 40-35 do not constitute a limitation or prohibition as to hospital, health, or

medical facilities.

The declaration and findings of public purpose of the Municipal Industrial Development Act is set out in Chapter 40-57-10 which was enacted in 1961 prior to the adoption of subsection 3 of section 47-57-02. While the provisions of this section take into account the establishment of industrial plans and activities with the purpose of increasing protection of wealth and adding to the volume of employment during slack seasons and to alleviate unemployment, these are not the sole controlling factors. This section also refers to activities in the public interest and for the welfare of the state.

The increase of wealth and column of employment and the alleviation of unemployment are factors, but they are not the sole factors. The operation of a hospital, health and medical facility is in harmony rather than in conflict with the provisions of section 50-57-20.

It is therefore our opinion that hospital, health and medical facilities come within the provisions of subsection 3 of section 40-57-02 and as such constitutes a project authorized under the provisions of Chapter 40-57. It is our further opinion that a city comes within the term "municipality" and as such a city may avail itself of the provisions of Chapter 40-57 in building hospital, health and medical facilities, employing the revenue bond provisions as set forth in Chapter 40-57.

HELGI JOHANNESON

Attorney General