

OPINION
70-55

July 16, 1970(OPINION)

Mr. James H. Williams
State's Attorney
Eddy County

RE: Cities - Water and Sewer Extension - Payment by City

This is in reply to your letter of 12 June 1970 with regard to a proposed extension of water and sewer lines.

Your letter informs us that it has been proposed that the governing body of your city, upon its own motion, expend funds from its water and sewer operating fund for the purpose of extending city water and sewer lines to the boundary of a tract of land being developed as an industrial park. Your letter further informs us that the industrial park site is a large tract of land all of which lies within the city limits. Your letter does not indicate the amount the proposed project will cost, but does indicate that the city does have more than ample funds in its water and sewer operating fund to complete this proposed water and sewer extension.

Your letter further states that it is your opinion that the city would be authorized to proceed with this water and sewer extension, upon its own motion; pay for the same from the water and sewer operating fund; and that it would not be necessary to submit the matter to a vote or fund the project by special assessments. Your question is apparently whether we agree with your opinion on this subject.

We assume that by water and sewer operating funds you refer to the municipal utilities funds provided for in section 40-33-10 of the North Dakota Century Code, basic expenditure (though not investment of surpluses) of which are governed by section 40-33-11 of the North Dakota Century Code.

We note that said section 40-33-11 authorizes payment out of municipal utilities fund all sums necessary for "enlargement, . . . improvement, and extension of the plant or plants of which the earnings go into the fund," upon proper orders or warrants. Section 40-33-01 enumerates various types of municipal utilities services, specifically including (subsection 5) "any waterworks, mains, and water distribution system and any equipment or appliances connected therewith;". It does however, not specify sewer utilities services.

Section 40-33-02 of the North Dakota Century Code, does limit with exceptions, the authority of a city to engage in enlargement, improvement or extension of existent plants as follows:

"40-33-02. ACQUIRING, ERECTING, OR IMPROVING PLANT, SYSTEM, OR LINE WITHOUT ELECTION PROHIBITED - EXCEPTION. No municipal officers shall purchase, erect, nor substantially enlarge, improve, or extend an existing plant, nor lease from others any plant, system or line provided for in section 40-31-01, unless the proposition shall have been submitted by a resolution of the governing body to the qualified electors of the municipality at an annual or special election called, held and conducted upon the notice and in the manner specified by this title for the election of the governing body of the municipality, and shall have been approved by a majority of the electors voting thereon. If, however, the cost of any enlargement, improvement, or extension will be paid out of the earnings of the plant and the cost does not exceed the sum of five thousand dollars, or if eighty per centum or more of the cost of any waterworks, mains, water system and equipment or appliances therefor is to be paid by special assessments or by the earnings of the plant or by both it shall be necessary to submit the proposition to the electors of the municipality; or in order to provide for a greater or more adequate water supply to meet the needs of the municipality for domestic use, for fire protection, or for sanitation and sewage disposal, regardless of cost the governing body thereof may by resolution provide for the needed improvement and facilities in cooperation with the state or federal government, or any agency thereof, without

an election, provided funds for such cooperation or for defraying the entire cost thereof are available in the municipal utilities fund as defined section 40-33-10.

We do not, of course, have a detailed analysis of the costs of the proposed project. Looking to the statutes, assuming that sewer revenues do go into the municipal utilities fund, it would appear that section 40-33-11 does permit payment out of this fund for sewer enlargements, improvements and extensions. The limitations of section 40-33-11 and therefore section 40-33-02 do not appear to apply to sewer enlargements, improvements and extensions, though we do note that sanitation and sewage disposal projects are mentioned in the exceptions to the statute. Water system enlargements, improvements and extensions are specifically mentioned in said section 40-33-01 and therefor could be limited by the provisions of section 40-33-02. Assuming that the water system enlargement, improvement or extension, is within the five thousand dollar - or other exceptions provided in said section 40-33-02 and that the entire cost of the project could be paid from the municipal utilities fund, there should be no difficulty in the city's governing body undertaking the project without a vote of the electors of the municipality.

We trust the within and foregoing will be sufficient for your purposes.

HELGI JOHANNESON
Attorney General