

**OPINION
71-250**

March 26, 1971 (OPINION)

Mr. Paul A. Muehler

Attorney at Law

Hankinson, ND

RE: Municipal Industrial Development Act - Nursing Homes -

Number of Projects

This is in reply to your letter indicating that you are acting as city attorney for a city contemplating building a nursing home or having one built and as to various legal ramifications thereof.

You indicate that the costs of the nursing home will run between three hundred thousand and three hundred and seventy-five thousand dollars, and that several legal questions have arisen in discussion of the project. Your questions are stated as:

1. Whether Chapter 40-57 of the North Dakota Century Code authorizes a city to construct, finance, or operate a nursing home in the State of North Dakota?"

(You ask that in answering this particular question you specifically would like our opinion as to subparagraph 3 of section 40-57-02 which reads as follows: "Any other industry or business not prohibited by the constitution or the laws of the State of North Dakota.")

2. Whether or not there is any cost limitation or a limitation as to the number of projects that may be entered into under chapter 40-57 of the North Dakota Century Code."
3. Whether a City can construct, finance, or operate a nursing home under any other statute or law of the State of North Dakota, and, if so, you would appreciate knowing what these statutes or provisions are."
4. Assuming that a city may construct, finance, or operate a nursing home, is there any procedure whereby the city may finance the cost of the nursing home through the issuance of bonds or other means, whereby such bonds or other means would constitute a charge, lien, or encumbrance upon the property of the municipality, the thought here being that if general obligations bonds could be issued, a much more favorable interest rate could be obtained at the time such bonds are sold."

We believe the Xerox copies of former opinion and correspondence enclosed herewith adequately answers your first question including the specific question with regard to the language of subsection 3 of section 40-57-02 of the North Dakota Century Code.

In response to your second question, there is no specific dollar amount, cost limitation or limitations as to the number of projects that may be entered into under the provisions of Chapter 40-57 of the North Dakota Century Code. Obviously, of course, there would be a point of diminishing returns, a point where the city did not have enough inhabitants to operate a plant, and a point where the objectives and purposes stated in Chapter 40-57 could not be achieved by a new project; however, the Legislature has not attempted to further specify such practical limitations.

In response to your third question, we believe you will also find material on this point in enclosed Xerox copies of correspondence and opinion. You might also consider in this regard, the statutory provisions contained in section 21-03-06 subsection 2 of the North Dakota Century Code, and subsection 10 of section 40-05-02 of the North Dakota Century Code with regard to hospitals. You might also consider in this regard the decision of the Supreme Court of the state in Bush v. North Dakota Health Council, 128 N.W.2d. 866 and language therein on page 869 of the N.W.2d. reporter as follows:

"The trial court held that the law makes no distinction between a medical hospital and a nursing home; that both are considered as hospitals, and that but one type of license is provided for by law to be issued for hospitals and related medical institutions which render medical and nursing care. * * * "

Then after considering information indicating all parties to the controversy agreed that the facility was a "nursing home" the Supreme Court of this state announced at page 870 of the North Western 2d. reporter that:

" * * * The facility still comes under the designation of hospitals and related medical institutions which render medical and nursing care."

While for some purposes there may be a valid difference between hospitals and nursing homes and while admittedly different statutes were considered in the Bush case (supra) than are concerned in your project, it would appear to us that the term "hospitals" as used in such statutes as 21-03-06 subsection 2 and 40-05-02 subsection 2 of North Dakota Century Code is broad enough to include "nursing homes."

In response to your fourth question, subsection 2 of section 21-03-06 of the North Dakota Century Code would authorize issuance of general obligation bonds of the city to erect, purchase, construct, enlarge or repair such "hospitals" including nursing homes. Subsection 10 of section 40-05-02 of the North Dakota Century Code makes such "hospitals" proper for a city to "establish" on which basis same would be proper, corporate, municipal, public purpose, upon which general fund moneys within usual budgetary provisions could be expended. It does seem doubtful to us that your city would have sufficient general fund moneys on hand to handle this size of a project through possibly part of the same might be handled in such a manner.

HELGI JOHANNESON

Attorney General