

**OPINION
78-200**

July 28, 1978 (OPINION)

Mr. Russell Staiger, AIP
Assistant Director
North Dakota State Planning Division
State Capitol
Bismarck, ND 58505

Dear Mr. Staiger:

This is in response to your letter of July 7, 1978, wherein you request an opinion of this office relative to Section 57-15-10.1 of the North Dakota Century Code, as amended. You set forth the intended use of funds generated by the levy of the one-half mill contemplated by the statute and ask whether such use would be in accord with the statute. You submit the following in your letter:

"Several North Dakota counties are currently considering the use of Chapter 57-15-10 of the North Dakota Century Code to generate local revenue to support the comprehensive planning process at the city, county and regional council level.

Basically what is intended is that the funds generated through the use of the 1/4 mill would be used as follows:

- a) Half of the generated funds would be provided to the respective regional councils to be used in support of the county planning process and in the promotion of economic development.

- b) The remaining half would be used to assist the individual cities of the county in developing comprehensive plans and the implementation of those plans in the form of social, physical and economic development programs that would address the specific needs of each city. This implementation would include attempting to solicit new business and industry by developing a planning process which identifies the resources and opportunities of the city and county.

Before any of the affected jurisdictions actually utilize this chapter of the century code as I have outlined it, I would appreciate your opinion as to whether or not the proposed use of funds is within the legislative intent of Chapter 57-15-10.1 N.D.C.C."

Section 57-15-01.1 of the North Dakota Century Code, as amended, provides as follows:

57-15-10.1. Counties and cities may levy for certain advertising purposes. The board of county commissioners of any city may annually levy a tax for the purpose of advertising the resources and opportunities in the county or city as the case

may be and promoting the industrial development thereof. Such tax shall not exceed the amount produced by the levy of one-half mill of a dollar of the net taxable valuation of the county or city as the case may be.

When any county or city makes the levy provided for by this section, the expenditure of the fund shall be under the direction of the governing boards of such county or city. The levy of such one-half mill authorized by this section shall not be subject to other mill limitations prescribed by law."
(Emphasis Supplied)

Whether the purpose for which the generated funds are to be spent in the instance of your inquiry would come within the statutory provisions is essentially a question of fact rather than a question of law and this office does not have the authority to adjudicate the facts, that being a prerogative of the courts. Those expenditures which are directly made for "advertising the resources and opportunities in the county or city," whether made by the county or city, whatever the case may be, or by some other agency by conduit, pursuant to specific contractual provisions in accord with such purpose, would appear proper. The same can be said as to "promoting the industrial development thereof," as provided for by the statute. Of essence, of course, is that the expenditures are made for the specific purposes set forth in the statute, and that such expenditures be made under the direction of the governing boards of such city or county.

With regard to expenditures "in support of . . . planning process," as referred to in your letter of inquiry, we are uncertain as to whether any or all aspects of such "planning process" are includable in the specific purposes of the statute. Such would be a question of fact dependent upon whether the specific purposes of the statute are contemplated or whether it is meant to expand the specific purposes. If such term is meant solely for the specific purposes of the statute, it may be a proper expenditure, however, if the use of that term is meant to expand such specific purposes, it would appear to be an improper expenditure. With regard to the proposed disposition by division of the generated funds and the furnishing of a portion of such funds to the respective regional planning councils to be used in support of the "county planning process and in the promotion of economic development," we find no problem or legal impediment so long as the expenditure is made for the specific authorized purposes set forth in the statute. Whether such funds are furnished and expended by another agency, presumably pursuant to a specific contract for specific purposes, would not appear to be in and of itself contrary to the statute so long as the purpose remains in accord with the stated provisions of the statute. We are aware that "planning process" can involve and entail purposes far beyond that contemplated by and specified in the statute and would caution that such expanded purposes or uses of funds would not be proper, legal, or otherwise authorized by the statute.

We trust that the foregoing observations and expressions will adequately set forth the position of this office upon the matters presented and that the same will be of interest and assistance to you.

Sincerely,

ALLEN I. OLSON

Attorney General