

Date Issued: April 13, 1982 (AGO 82-26)

Requested by: Ronald J. Bostick, Director
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- QUESTION PRESENTED -

Whether a municipality may make a loan to a private developer, using the proceeds from the sale of bonds issued under chapter 40-58 of the North Dakota Century Code, for the purpose of financing the undertaking of an urban renewal project by such developer.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that a municipality may make a loan to a private developer, using the proceeds from the sale of bonds issued under chapter 40-58, N.D.C.C., for the purpose of financing the undertaking of an urban renewal project by such developer.

- ANALYSIS -

The general rule in North Dakota concerning the powers of a municipality was stated as follows by the North Dakota Supreme Court in Megarry Bros. v. City of St. Thomas, 66 N.W.2d. 704 (N.D. 1954):

Article VII, Section 1 of the North Dakota Constitution directs the legislative assembly to provide by the general law for the organization of municipal corporations. These municipal corporations when created pursuant to statute become agencies of the state and have only the powers expressly conferred upon them by the legislature or such as may be necessarily implied from the powers expressly granted. 66 N.W.2d. 704, 709.

Section 40-58-10(1), N.D.C.C., authorizes a municipality to issue bonds to finance the undertaking of an "urban renewal project." Payments of principal and interest on such bonds are to be made solely from the income, proceeds, revenues, and funds received or held by the municipality in connection with urban renewal projects. "Urban renewal project" is defined in section 40-58-19(10), N.D.C.C., as follows:

"Urban renewal project" may include undertakings or activities of a municipality in an urban area for the elimination and for the prevention of the development or spread of slums and blight, and may involve slum clearance and redevelopment in an urban renewal area, or rehabilitation area, or any combination or part thereof in accordance with an urban renewal plan.

Section 40-58-07, N.D.C.C., provides that "every municipality shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter. . . ."

In addition to this broad grant of powers, section 40-58-03, N.D.C.C., provides:

A municipality, to the greatest extent it determines to be feasible in carrying out the provisions of this chapter, shall afford maximum opportunity, consistent with the sound needs of the municipality as a whole, to the rehabilitation or redevelopment of the urban renewal area by private enterprise. . . .

Neither the foregoing provisions nor any other provision of the North Dakota Century Code expressly confers upon a municipality the power to make a loan to a private developer with the proceeds of bonds issued under chapter 40-58, N.D.C.C. However, Article X, Section 18 of the North Dakota Constitution provides that a municipality may make a loan in connection with the municipality's engaging in an industry, enterprise, or business. More specifically, that section authorizes the state and any county or city to engage in any industry, enterprise, or business, except the traffic of liquor, and further provides:

. . . 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.

The North Dakota Supreme Court, in Gripentrog v. City of Wahpeton, 126 N.W.2d. 230 (N.D. 1964), construed this section of the Constitution as follows:

Article X, Section 18 does not prohibit the making of loans or giving of credit or making donations in connection with a city's engaging in any industry, enterprise, or business except engaging in liquor traffic. What it does prohibit is for a city "otherwise" to make loans or give its credit or make donations. In other words, making loans or giving credit may be done in connection with the city's engaging in any permissible industry, enterprise, or business, but not otherwise. 126 N.W.2d. 230, 237, 238.

In Gripentrog, the city proposed to issue revenue bonds and use the proceeds for the acquisition of a site and for the construction of a sugar beet processing plant, which would then be leased to a private corporation, all under the authority of chapter 40-57, N.D.C.C. The Court held that the city was engaging in an enterprise, which was specifically authorized by Article X, Section 18, and, further, that Article X, Section 18 specifically authorized the city to loan or give its credit in connection with engaging in an enterprise.

It is my opinion that a municipality is engaging in an enterprise when it enters into an urban renewal project, and therefore, that it may make a loan to a private developer in connection with that enterprise with the proceeds of bonds issued under the authority of chapter 40-58, N.D.C.C.

- EFFECT -

This opinion is issued pursuant to section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

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