

Date Issued: April 14, 1982 (AGO 82-31)

Requested by: Ronald A. Reichert, City Attorney for the City of Medora

- QUESTION PRESENTED -

Whether a municipality has the power to establish a permanent trust fund.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that a municipality does not have the power to establish a permanent trust fund.

- ANALYSIS -

It is a general principle that cities hold and exercise their powers subject to legislative control. The legislative authority over the political and governmental powers of a city is supreme except as limited by the state and federal constitutions. Article VII Section 1 of the North Dakota Constitution states in part:

Except in the case of home rule cities and villages as provided in this section the legislative assembly shall provide by general law for the organization of municipal corporations, restricting their powers as to levying taxes and assessments, borrowing money, and contracting debts. Money raised by taxation, loan or assessment for any purpose shall not be diverted to any other purpose except by authority of law.

The general rule in North Dakota concerning 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):

Section 130 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 130 is now Article VII, Section 1.

Under our constitution a city has no power to enact ordinances unless it is authorized by legislative enactment to do so. The authority so granted by legislative enactment may thereafter be qualified or withdrawn. If the Legislature enacts a statute which clearly conflicts with ordinances that have been enacted, the statute prevails and the conflicting ordinances are superseded and rendered invalid. See State v. Gronna, 59 N.W.2d. 514, 531 (N.D. 1953).

Section 40-05-01(2) of the North Dakota Century Code gives the governing body of a municipality the power to control its finances, to make payment of its debts and expenses,

to contract debts and borrow money, to establish charges for any city or other services, and to control the property of the municipality. Section 40-16-11, N.D.C.C., states that all funds in the city treasury shall be under the control of the governing body of the city. However, these provisions do not give the governing board of the municipality the express or implied power to invest public moneys in a trust fund.

Section 21-06-07, N.D.C.C., states:

POLITICAL SUBDIVISIONS MAY INVEST SURPLUSES. From and after the passage and approval of this section, it shall be lawful for counties, cities, school districts, park districts and townships in this state to invest surpluses in their general fund, or surpluses in any special or temporary fund, in bonds, treasury bills and notes or other securities which are a direct obligation of the treasury of the United States or of an instrumentality thereof, provided, however, that bonds, treasury bills and notes or other securities so purchased shall be taken into consideration in making levies for the ensuing year, and when funds are needed for current expenses, the governing board and authorities of such municipalities shall be authorized to convert said obligations into cash.

It is clear from this section that a municipality is limited in how it may invest surpluses in its general fund or surpluses in any special or temporary fund. Such investments must be in bonds, treasury notes, and notes or other securities which are a direct obligation of the treasury of the United States or of an instrumentality thereof. When the funds are needed for expenses, the governing board is authorized to convert the obligations into cash. Not only is the establishment of a permanent trust fund not authorized by section 21-06-07, N.D.C.C., but a permanent trust fund would not allow a municipality to convert the principal amount of the trust fund into cash.

Since the establishment of a trust fund by a municipality is not authorized by the Legislature, the municipality does not have the power to invest its public moneys in a permanent trust fund.

- 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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