

Date Issued: March 3, 1983 (AGO 83-11)

Requested by: Senator Wayne Stenehjem

- QUESTION PRESENTED -

Whether chapter 54-40 of the North Dakota Century Code permits the State Tax Department to enter into an agreement with a municipality whereby the State Tax Department agrees to collect taxes on behalf of the municipality.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that chapter 54-40, N.D.C.C., does not permit the State Tax Department to enter into an agreement with a municipality whereby the State Tax Department agrees to collect taxes on behalf of such municipality.

- ANALYSIS -

Section 54-40-01, N.D.C.C., provides:

54-40-01. AGREEMENT. Two or more governmental units or municipal corporations having in common any portion of their territory or boundary, by agreement entered into through action of their governing bodies, may jointly or cooperatively exercise their respective separate powers, or any power common to the contracting parties or any similar powers, including those which are the same except for the territorial limits within which they may be exercised for the purpose of acquiring, constructing, and maintaining any building for their joint use. The term "governmental unit" as used in this action includes and means every city, county, town, park district, school district, states and United States governments and departments of each thereof, and all other political subdivisions even though not specifically named or referred to herein. (Emphasis supplied).

The above-quoted statute allows governmental units or municipal corporations which meet certain requirements to contract for the purpose of "acquiring, constructing, and maintaining a building for their joint use." The statute quoted above is limited to that purpose.

Section 54-40-08, N.D.C.C., provides as follows:

54-40-08. JOINT FUNCTIONS - WHO MAY PARTICIPATE.

1. ny municipality, county, park district, school district, or other political subdivision of this state, upon approval of its respective governing body, may enter into agreements with one another for joint or

cooperative action, on a cost-sharing basis, or otherwise, to carry out any function or duty which may be authorized by law or assigned to one or more of them, and to expend funds of such municipality, county, park district, school district, or other political subdivision pursuant to such agreement, to use unexpended balances of their respective current funds, to enter into lease-option to buy and contract for deed agreements between themselves and with private parties, and to accumulate funds from year to year for the provision of services and facilities, and to otherwise share or contribute property in accordance with such agreement in jointly and cooperatively carrying out such function or duty.

2. ny municipality, county, park district, school district, or other political subdivision of this state may enter into agreements in the manner provided in subsection 1 with any agency, board, or institution of the state for the use of buildings and facilities under the control of such state agency, board or institution for such periods as the parties may determine to be necessary. No such agreement shall be entered into by any state agency, board, or institution unless the respective governing body or officer of such state agency, board or institution has approved the agreement and the attorney general has determined that the greement is legally sufficient. The municipality, county, park district, school district, or other political subdivision of this state may make improvements to such buildings or facilities in lieu of any rental or other payments, but all such improvements shall first be approved by the governing body or officer of such state agency, board, or department. Such buildings and facilities may be moved or replaced at any time during the term of an agreement, and the municipality, county, park district, school district, or other political subdivision shall be entitled to use such buildings and facilities constructed in place thereof for the remainder of the term of the agreement. (Emphasis supplied).

Section 54-40-08(1), N.D.C.C., allows political subdivisions to enter into agreements with one another for joint or cooperative action to carry out any function or duty which may be authorized by law or assigned to one or more of them. The State Tax Department is an agency of the state and is not a political subdivision. Section 54-40-08(2), N.D.C.C., allows political subdivisions to enter into agreements in a manner provided in subsection 1 with any agency, board, or institution of the state for use of buildings and facilities under the control of such agency, board or institution.

Because of the limited scope of the above-quoted provisions, it is my opinion that the above-quoted sections do not authorize the State Tax Department to enter into an agreement with a municipality for the State Tax Department to collect taxes on behalf of the municipality.

However, an exception to this conclusion is created under the provisions of section 57-01-02.1, N.D.C.C., which provides, in part:

57-01-02.1. SALES AND USE TAX COLLECTION AGREEMENTS  
WITH HOME RULE CITIES.

1. The governing body of any incorporated city that has adopted the home rule provisions of chapter 40-05.1 and the tax commissioner are hereby authorized and empowered to enter into contractual agreements whereby the tax commissioner shall have authority to collect any sales and use taxes assessed by such incorporated city.
2. \* \* \*
3. \* \* \*

- 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.

ROBERT O. WEFALD  
Attorney General

Prepared by: Nancy K. Hoff  
Assistant Attorney General