

Office of the Attorney General
State of North Dakota

Opinion No. 85-14

Date Issued: April 30, 1985

Requested by: Vince H. Ficek
Dickinson City Attorney

--QUESTIONS PRESENTED--

Whether a city may contribute money to a private nonprofit corporation in order to assist the corporation in constructing a civic facility that the city will not own or control.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that a city may not contribute money to a private nonprofit corporation in order to assist the corporation in constructing a civic facility that the city will not own or control.

--ANALYSIS--

The general rule governing municipal authority is that municipal corporations are agencies of the state and have only the powers expressly conferred on them by the Legislature or such as may be necessarily implied from the powers expressly granted. *Megarry Bros. v. City of St. Thomas*, 66 N.W.2d 704, 705 (N.D. 1954). In defining a city's power, the rule of strict construction applies and any doubt as to the existence or extent of the powers must be resolved against the city. *Roeders v. City of Washburn*, 298 N.W.2d 779, 782 (N.D. 1980).

The North Dakota Constitution, Art. X, § 18, provides:

The state, any county or city may make internal improvements and may engage in any industry, enterprise or business, not prohibited by article XX of the constitution, 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.

In construing Article X, § 18, the court has stated that:

[Article X, § 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.

Gripentrog v. City of Wahpeton, 126 N.W.2d 230, 237-238 (N.D. 1964) (city's leasing of sugar processing plant permissible enterprise). The action contemplated in this case is not a permissible enterprise of a city under Article X, § 18.

A restrictive interpretation of Article X, § 18, is supported by two North Dakota attorney general's opinions. The first opinion cited Article X, § 18 and concluded that there was 'serious doubt' that the Stutsman County Board of County Commissioners could contribute money 'to a worthwhile county project (Pioneer Village) where there is no statutory authority for same or for making a levy therefor.' 1968-1970 N.D. Op. Att'y Gen. 92. The second opinion also cited Article X, § 18 and held that a township cannot make donations to entities such as the Red Cross or American Cancer Society. 1968-1970 N.D. Op. Att'y Gen. 507.

In short, municipalities generally possess only those powers that are enumerated or those powers that may be necessarily inferred. Neither the Constitution nor N.D.C.C. Ch. 40-05 appear to permit the action contemplated here. See, e.g., Egan v. City and County of San Francisco, 133 P. 294 (Cal. 1913) (city cannot contribute money to private corporation to build opera house if city does not retain absolute control and management over building).

N.D.C.C. § 57-15-44 provides that a city may levy taxes in order to acquire real estate for the purpose of constructing public buildings. It is my opinion that N.D.C.C. § 57-15-44 presumes that a city will also acquire title to the real estate. Therefore, I do not believe that N.D.C.C. § 57-15-44 may be invoked in this case because the city will neither acquire title to the property nor have control over the property.

N.D.C.C. § 40-40-05(2)(a) delineates municipal budget requirements for maintenance and operation expenses. A city may be able to invoke § 40-40-05(2)(a) for rental expenses after a private nonprofit corporation has constructed a civic facility. However, a city could not invoke § 40-40-05(2)(a) in order to assist a private nonprofit corporation in constructing a civic facility. N.D.C.C. § 40-40-05(2)(b) delineates municipal budget requirements for building construction expenses. However, this statute presumes that a city possesses title to the property. Therefore, N.D.C.C. § 40-40-05(2)(b) may not be invoked in this case as the city will neither acquire title to the property nor have the control over the property.

In summary, there is no statutory authority for a city to contribute money to a private nonprofit corporation which is constructing a civic facility not to be owned or controlled by the city.

However, there is nothing to prevent the city from contracting with the Board of Higher Education pursuant to N.D.C.C. Ch. 54-40 which authorizes municipalities to enter into agreements with state agencies for the joint exercise of governmental powers. Specifically, N.D.C.C. § 54-40-08(1) provides that 'Any municipality . . . may enter into agreements . . . for joint or cooperative action, on a cost-sharing basis, or otherwise . . . to extend funds to such municipality . . . pursuant to such agreement . . . and to otherwise share or contribute property in accordance with such agreement. . . .'

--EFFECT--

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until the questions presented are decided by the courts.

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