

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 91-20

Date issued: December 13, 1991

Requested by: Timothy Priebe, City Attorney

- QUESTIONS PRESENTED -

I.

Whether any portion of the city of Dickinson's city visitors' promotion capital construction fund may be used for expenses incurred in connection with the operation of the Dickinson Convention and Visitors' Bureau.

II.

Whether any portion of the city visitors' promotion capital construction fund may be used for any purpose other than capital construction.

- ATTORNEY GENERAL'S OPINION -

I.

It is my opinion that no portion of the city of Dickinson's city visitors' promotion capital construction fund may be used for expenses incurred in connection with the operation of the Dickinson Convention and Visitor's Bureau.

II.

It is my further opinion that no portion of the city visitors' promotion capital construction fund may be used for any purpose other than the purchase, equipping, improving, construction, maintenance, repair, and acquisition of buildings or property consistent with visitor attraction or promotion, and the payment of bonds, including costs of issuance, issued for any of the foregoing purposes.

- ANALYSES -

I.

N. D. C. C. ch. 40-57.3 gives cities the authority to impose two separate and distinct taxes. First, N. D. C. C. ' 40-57.3-01 allows the imposition of a city lodging tax, the proceeds of which are to be deposited in the "city visitors' promotion fund." N. D. C. C. ' 40-57.3-01. (Hereafter Fund 1). The moneys in Fund 1 "must be used generally to promote, encourage, and attract visitors to come to the city and use the travel and tourism facilities within the city." N. D. C. C. ' 40-57.3-02. In addition, the moneys in Fund 1 "may not be used for

any type of capital construction or purchase of real property." N. D. C. C. ' 40-57.3-03.

This opinion addresses the use of funds created by the second tax. This tax may be imposed pursuant to N. D. C. C. ' 40-57.3-01.1. N. D. C. C. ' 40-57.3-01.1 allows the imposition of a city lodging and restaurant tax in addition to the city lodging tax described in N. D. C. C. ' 40-57.3-01. The proceeds of the city lodging and restaurant tax must be deposited in the "city visitors' promotion capital construction fund." N. D. C. C. ' 40-57.3-01.1. (Hereafter Fund 2). The moneys in Fund 2 must be used "generally for the purchase, equipping, improving, construction, maintenance, repair, and acquisition of buildings or property consistent with visitor attraction or promotion." N. D. C. C. ' 40-57.3-02. In addition, the moneys in Fund 2 "may be used only for payment of bonds issued, and the costs of issuance related thereto, under this section or capital construction, maintenance, and repair or acquisition of property consistent with the purposes of this chapter." N. D. C. C. ' 40-57.3-03.

The use of the word "generally" in N. D. C. C. ' 40-57.3-02, raises the question whether moneys in Fund 2 may be used only for the purposes specifically provided in N. D. C. C. ch. 40-57.3 or whether the moneys in Fund 2 may be used for other purposes, including expenses associated with the operation of a convention and visitors' bureau, consistent with visitor attraction or promotion.

Unless words in a statute are defined in the code, they are to be given their plain, ordinary, and commonly understood meaning. N. D. C. C. ' 1-02-02, Reed v. Hillsboro Public School District, Civil No. 900392, slip op. at 6 (N. D. November 12, 1991). The word "generally" means "1. For the most part; widely: generally known. 2. As a rule; usually. 3. In disregard of particular instances and details: generally speaking." THE AMERICAN HERITAGE DICTIONARY, 552 (2nd College Edition, 1982). Given its ordinary meaning, the word "generally" in N. D. C. C. ' 40-57.3-02 would permit moneys in Fund 2 to be used for purposes unrelated to the specific purposes indicated in N. D. C. C. ' 40-57.3-02 and 40-57.3-03. In contrast, the word "only" in N. D. C. C. ' 40-57.3-03 appears to limit the use of moneys in Fund 2 to the specific purposes listed. Thus, considered together, the language in N. D. C. C. ' 40-57.3-02 and 40-57.3-03 creates an ambiguity.

The legislative history of a statute may be considered in resolving an ambiguity. N. D. C. C. ' 1-02-39(3). Initially N. D. C. C. ch. 40-57.3 allowed cities to impose a city lodging tax identical to the tax currently imposed pursuant to N. D. C. C. ' 40-57.3-01. That tax must be deposited in Fund 1 and used for the purposes described earlier in this opinion. In 1987, N. D. C. C. ch. 40-57.3 was amended to allow cities to impose an additional tax, the proceeds of which are to be deposited in Fund 2. 1987 N. D. Sess. Laws ch. 504. The legislative history regarding the 1987 change contains only testimony which discusses using the proceeds of this tax for capital assets. Nothing in the legislative history indicates that the proceeds of the tax may be used for any other purpose. It is my conclusion, therefore, that when the Legislature amended N. D. C. C. ch. 40-57.3 it limited the use of moneys in Fund

2 to the specific purposes provided in N. D. C. C. " 40-57.3-02 and 40-57.3-03. It is my opinion, therefore, that no portion of the city of Dickinson's "city visitors' promotion capital construction fund" (Fund 2) may be used for expenses incurred in connection with the operation of the Dickinson Convention and Visitors' Bureau. However, if a city has imposed a tax pursuant to N. D. C. C. ' 40-57.3-01 and deposited the proceeds in Fund 1, the moneys in Fund 1 may be used to operate a convention and visitors' bureau.

II.

Based on the analysis in part I, it is my further opinion that no portion of a "city visitors' promotion capital construction fund" (Fund 2) may be used for any purpose other than the purchase, equipping, improving, construction, maintenance, repair, and acquisition of buildings or property consistent with visitor attraction or promotion, and the payment of bonds, including costs of issuance, issued for any of the foregoing purposes.

- EFFECT -

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

Nicholas J. Spaeth  
Attorney General

Assisted by: Tom Tudor  
Assistant Attorney General

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