

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 94-F-02

Date issued: January 20, 1994

Requested by: Larry Quast, Stanton City Attorney

- QUESTION PRESENTED -

Whether a city without a home rule charter may provide free electricity to a school district.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that a city without a home rule charter may provide free electricity to a school district when such is provided for in a joint powers agreement between the city and school district or when the city and school district are operating a public recreation system pursuant to N.D.C.C. ch. 40-55.

- ANALYSIS -

The issue of whether a city may provide free electricity to a school district does not implicate Article X, Section 18 of the North Dakota Constitution, which prohibits a political subdivision from loaning or giving its credit to or in aid of any individual, association, or corporation unless it is for the reasonable support of the poor. This is because the terms "individual," "association," and "corporation" refer to private individuals, associations, and corporations. This office previously has concluded that a rural fire district is not an individual, association, or corporation, as those terms are used in Article X, Section 18 of the North Dakota Constitution. 1983 N.D. Op. Att'y Gen. 53. Also, in a March 11, 1976, letter to Mr. Russell Staiger, then Chief Deputy Attorney General Gerald W. Vande Walle stated that a contribution by a county to a regional planning council is not a contribution within the meaning of Article X, Section 18 of the North Dakota Constitution. Similarly, this office has found that "[a] school district is a political subdivision and not a private individual, association, or corporation."

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Letter from Attorney General Nicholas J. Spaeth to Mayor Eugene Belisle (April 7, 1992). Consequently, Article X, Section 18 of the North Dakota Constitution does not prohibit a city from providing free electricity to a school district.

However, cities are agencies of the state and have only the powers expressly conferred on them by the Legislature or such powers as may be necessarily implied from those expressly granted. Megarry Bros. v. City of St. Thomas, 66 N.W.2d 704, 709 (N.D. 1954). Thus, whether a city may provide free electricity to a school district depends on whether a statute exists which expressly confers such authority on cities, or from which such authority can be necessarily implied. The North Dakota Supreme Court has explained:

In defining municipal powers, the rule of strict construction applies. Lang v. City of Cavalier, 59 N.D. 75, 228 N.W. 819 (1930). Once a municipality's powers have been determined, however, "the rule of strict construction no longer applies, and the manner and means of exercising those powers where not prescribed by the Legislature are left to the discretion of the municipal authorities." Id., 228 N.W. at 822. Leaving the manner and means of exercising municipal powers to the discretion of municipal authorities implies a range of reasonableness within which a municipality's exercise of discretion will not be interfered with or upset by the judiciary.

Haugland v. City of Bismarck, 429 N.W.2d 449, 453-54 (N.D. 1988).

No North Dakota statutes expressly give cities the authority to provide free electricity to school districts. Such authority may be necessarily implied, however, from N.D.C.C. ? 15-29-08 and N.D.C.C. ch. 54-40.3, which enable a city and a school district to enter into a joint powers agreement or from N.D.C.C. ch. 40-55, which enables a city and a school district to cooperate in providing a public recreation system.

N.D.C.C. ? 54-40.3-01 provides that a city and school district, upon approval of their respective governing bodies,

may enter into an agreement for the cooperative or joint administration of any power or function that is authorized by law or assigned to one or more of them. Subsection 2 of N.D.C.C. ? 15-29-08 grants the school board of a public school district the power and duty to "operate and maintain such elementary and high schools as it may deem requisite and expedient." Subsection 1 of N.D.C.C. ? 54-40.3-01 states what may be provided for in the joint powers agreement, including:

d. The manner in which the parties to the agreement will finance the cooperative or joint undertaking and establish and maintain a budget for that undertaking. The parties to the agreement may expend funds pursuant to the agreement, use unexpended balances of their respective current funds, enter into a lease-option to buy and contract for deed agreements between themselves and with private parties, accumulate funds from year to year for the provision of services and facilities, and otherwise share or contribute property in accordance with the agreement in cooperatively or jointly exercising or carrying out the power or function. The agreement may include the provision of personnel, equipment, or property of one or more of the parties to the agreement that may be used instead of other financial support.

(Emphasis supplied.)

Pursuant to N.D.C.C. ? 54-40.3-01, it would be within the city's authority to enter into a joint powers agreement with a school district in which the city agrees to jointly maintain the school buildings through providing free electricity to the school district. Thus, a city without a home rule charter may provide free electricity to a school district if such is provided for in a joint powers agreement pursuant to N.D.C.C. ch. 54-40.3.

Authority for a city to provide free electricity to a school district also may necessarily be implied from N.D.C.C. ch. 40-55, which enables a city and a school district to cooperate in providing a public recreation system. It would be within a

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city's authority, and not unreasonable, for the city to provide free electricity to a school district when the city and school district are operating a public recreation system pursuant to N.D.C.C. ch. 40-55.

Therefore, it is my opinion that a city without a home rule charter may provide free electricity to a school district when such is provided for in a joint powers agreement between the city and school district or when the city and school district are operating a public recreation system pursuant to N.D.C.C. ch. 40-55.

- 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.

Heidi Heitkamp
ATTORNEY GENERAL

Assisted by: Douglas A. Bahr, Assistant Attorney General

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