

LETTER OPINION
95-L-247

October 27, 1995

Mr. Bryan R. Dvirnak, CEO
ND Development Fund
1833 East Bismarck Expressway
Bismarck, ND 58504

Dear Mr. Dvirnak:

Thank you for your letter asking whether the North Dakota Development Fund, Inc. (NDDF) has authority to enter into an agreement with the Roosevelt Custer Regional Council (Council) to provide \$300,000 of the Council's \$1,087,000 fund to be administered by the Council in partnership with the NDDF.

Based upon the information provided in your letter, it is my understanding that the reason for the funding request is to allow the Council to leverage federal funds to create a local loan pool. Under the terms of the agreement, the NDDF would participate in the Council's loan committee as a voting member. The funds would be under the control of the NDDF and maintained at the Bank of North Dakota. Once a loan or equity is approved by the Council and all the terms and conditions for the transaction have been satisfied and the loan or investment documents approved by the NDDF, the funds would be released to the Council for funding of the project.

The statutory authority for the NDDF is set forth in North Dakota Century Code (N.D.C.C.) ch. 10-30.5. N.D.C.C. § 10-30.5-02(1) provides:

It is the purpose of this chapter to create a statewide nonprofit development corporation that will have the authority to take equity positions in, to provide loans to, or to use other innovative financing mechanisms to provide capital for new or expanding businesses in this state, or relocating businesses to this state. The corporation's principal mission is the development and expansion of primary sector business in this state. The corporation may form additional corporations, limited liability companies, partnerships, or other forms of business associations in order to further its mission of primary sector economic development.

Mr. Bryan R. Dvirnak, CEO
October 27, 1995
Page 2

N.D.C.C. § 10-30.5-04(1) provides that, in addition to the powers afforded to it as a nonprofit corporation under N.D.C.C. ch. 10-24, the NDDF has the authority to "[c]ooperate and contract with any private or public entity."

The transaction described in your letter is in essence a \$300,000 letter of credit to the Council by the NDDF that is passed through the Council with the NDDF's approval to a qualifying primary sector business. The benefit to the state is the ability to leverage additional federal funds. This is consistent with the statutory mission of the NDDF for the development and expansion of primary sector business in North Dakota and within its statutory authority to form partnerships and to cooperate and contract with public and private entities. Thus, it is my opinion that the NDDF has the authority to enter into the transaction with the Council as described in your letter.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

DER/jrs