

LETTER OPINION
95-L-233

October 11, 1995

Mr. F.C. Rohrich
Emmons County State's Attorney
PO Box 657
Linton, ND 58552

Dear Mr. Rohrich:

Thank you for your October 3, 1995, letter asking whether a county without a home rule charter can loan uncommitted monies from its general fund to a private entity for economic development. It is my opinion that state law authorizes such a loan if made through a county job development authority or economic development organization pursuant to N.D.C.C. ch. 11-11.1, or through a joint powers agreement between the county and a city authorized to engage in the enterprise of economic development under either N.D.C.C. ch. 40-57.4 or a city home rule charter.

Article X, Section 5 of the North Dakota Constitution does not prohibit a political subdivision from making loans as part of an industry, enterprise, or business. Gripentrog v. City of Wahpeton, 126 N.W.2d 230 (N.D. 1964). However, political subdivisions possess and may exercise only those powers provided by law. N.D. Const. art. VII, § 2. Therefore, a political subdivision must also have "specific statutory authority to make loans or donations or the statute must contain language from which the authority can be necessarily implied." Letter from Attorney General Heidi Heitkamp to Walter Lipp (April 12, 1993).

"A county has no general authority to loan money . . . for economic development. However, N.D.C.C. ch. 11-11.1 authorizes those counties which comply with its provisions to engage in economic development projects under specified circumstances." Letter to Walter Lipp, supra.

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If [a county] created a job development authority or contracted with an industrial development organization in accordance with chapter 11-11.1, and acquired funds for disposition under N.D.C.C. § 11-11.1-03, then the county could make loans or grants under section 10 of that section to carry out its authority under the chapter. This activity would be permitted under North Dakota Constitution Article X, Section 18, as an engagement in an enterprise for a public purpose.

Id. A county "may not use any of the authority contained in N.D.C.C. ch. 11-11.1 unless it performs the predicate acts to comply with that chapter and avail itself of that authority."
Id.

Emmons County has not created a job development authority or contracted with an industrial development organization as authorized in N.D.C.C. ch. 11-11.1, nor has it adopted a home rule charter authorizing it to make such a loan. See 1993 N.D. Op. Att'y Gen. 40. Therefore, it is my opinion that Emmons County currently lacks statutory authority to loan money by itself to a private entity for economic development. Further, there is not a statute authorizing it to loan or give money to another political subdivision. See Letter from Attorney General Nicholas Spaeth to Eugene Belisle (April 7, 1992).

Although Emmons County may not make such a loan by itself, N.D.C.C. § 54-40.3-01(1) authorizes one or more political subdivisions to enter into a joint powers 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." Thus, so long as a city is authorized to engage in the enterprise of economic development and loan money to a private entity, a county may enter into a joint powers agreement to use county funds to cooperatively engage in that enterprise.

A city may engage in the enterprise of economic development by creating a city job development authority or contracting with an industrial development organization under N.D.C.C. ch. 40-57.4. In addition,

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a home rule city [that has not created a job development authority] may engage in the enterprise of giving grants and making loans to private entities if the home rule charter authorizes the home rule city to engage in enterprises and the implementing ordinance: (1) authorizes the city to engage in the proposed enterprise, (2) provides assurance that the activity has a public purpose, (3) sufficiently details the manner of implementing the activity, and (4) provides for supervisory controls to ensure the public purpose is met.

1993 N.D. Op. Att'y Gen. 40 at 42-43.

I understand that the city of Linton has not created a job development authority or contracted with an economic development organization under N.D.C.C. ch. 40-57.4. However, the city's home rule charter assumes all municipal authority granted under state law, including the power "[t]o engage in any . . . enterprise permitted by the constitution or not prohibited by statute." N.D.C.C. § 40-05.1-06(10). The city charter also authorizes a city sales tax, some of the proceeds of which are to be used for economic development.

So long as this authority is properly implemented through city ordinance, as described in 1993 N.D. Op. Att'y Gen. 40 at 42-43, it appears that the city of Linton may engage in the enterprise of economic development. If so, Emmons County and Linton may enter into a joint powers agreement under which Emmons County will cooperate in that enterprise by loaning money to a private entity. N.D.C.C. ch. 50-40.3 lists the provisions that may be included in such an agreement.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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