

OPINION
45-13

July 7, 1945 (OPINION)

AIRPORTS

RE: Rights of Cities and Villages to Purchase Land for

This office is in receipt of your letter under date of July 3, 1945. You say in your letter that your city council is considering buying from the State School Land Department a tract of land containing approximately 150 acres at fifteen dollars per acre for use as an airfield. You desire to know whether or not this land may be purchased by your city without being authorized to do so by the vote of the electors.

You further say that some time ago your city bought a small tract of land from the school land department for use as recreational grounds. You desire to be informed as to whether the city may now have a part of this land surveyed and platted as lots and sell such lots for business and residence purposes.

In answer to your first question I beg to advise you that your city may, under the provisions of chapter 2-02 of the North Dakota Revised Code of 1943, purchase the 150 acres of land from the School Land Department, provided funds for that purpose have been duly appropriated and have been included in your city budget. I assume that the amount required for the purchase of the land may be appropriated without exceeding the statutory tax limitation of your city. I also assume that it is not necessary to issue bonds in order to obtain the required funds; for if it is necessary to issue bonds, the approval of the voters of the city must first be secured.

As to the tract of land which was purchased for recreational purposes, you do not say in your letter whether this land is owned by the city or by the park district. I assume that the land was acquired by the city. If the city owns the land it is my opinion that it may be sold provided the sale is authorized by a vote of two-thirds of all the members of your city council. (See Section 40-1104, N.D. Revised Code, 1943).

The fact that a tract of land was purchased for recreational purposes does not prevent the city from selling same provided the governing body of your city determines that such land, or a part thereof, is no longer needed for such purposes. Although a city or village does not have the authority to engage in the real estate business, if in the judgment of your city council it will be to the advantage of the city to sell this land as lots, it is my opinion that the tract may be surveyed and platted and sold as lots. The decision of your city council to sell should be put into effect by the enactment of an appropriate ordinance.

I have based the foregoing opinion on the assumption that the school land referred to in your letter is not subject to the ordinary school land contract, and also that the deed to the school land which you desire to sell contains no reservation as to its use.

NELS G. JOHNSON

Attorney General