

**OPINION  
53-112**

March 2, 1953            (OPINION)

**TAXATION**

**RE: Levy for Advertising Purposes**

This office acknowledges receipt of your inquiry of February 26, 1953, asking for an interpretation of Section 57-15101 of the 1949 Supplement to the North Dakota Revised Code of 1943 which provides that counties and cities may levy for certain advertising purposes a tax not in excess of one-half mill on the dollar of the net taxable valuation of the county or city having a population in excess of 3,000, for the purpose of advertising the resources and processing opportunities in North Dakota and promoting the industrial development thereof.

In connection with this section you present the following problems:

"How far could a county or city go in promoting industrial development and still stay within the bounds of this law? Specific questions might be these:

1. Could a county or city acquire sites under this law and make them available to a prospective industry (a) by direct sale, (b) by lease, (c) by gift?
2. Could a county or city erect structures upon a site and place equipment therein and then (a) sell, (b) lease, (c) give the site, structures and equipment to the enterprise?
3. Could a county or city use the funds provided for under this section to undertake some enterprise of their own?"

On the threshold of determination of this problem, we are first confronted with Section 183 of the Constitution of the State of North Dakota wherein the debt of any county, township or city may not exceed five percent of the assessed valuation unless by a two-thirds vote the people authorize an added three percent on such assessed valuation. The levies then which may be made by the county or the city would be first controlled by that provision.

Next, we find section 185 of the Constitution of the State of North Dakota which reads as follows:

"Section 185. The state, any county or city may make internal improvements and may engage in any industry, enterprise or business, not prohibited by Article 20 of the Constitution, but neither the state nor any political subdivision thereof shall otherwise loan or give its credit or make donations to or in aid of any individual, association or corporation except for reasonable support of the poor, nor subscribe to or become the owner of capital stock in any association or corporation."

This section of the Constitution has been construed by our Supreme Court in the case of Egbert v. Dunseith 74 ND 1 to the effect that it authorizes the state or the county or city to engage in private enterprise.

The evident purpose and intent of the adoption by the Legislative Assembly of the State of North Dakota for 1945 of Chapter 294, which is now section 57-15101 of the 1949 Supplement was to advertise the resources and processing opportunities in North Dakota for the purpose of promoting the industrial development of the state.

Answering specifically, therefore, your question number one, it is the opinion of this office that a county or city may, under said section, levy a half mill levy upon its net taxable valuation for the purpose of advertising the resources and processing opportunities so as to promote the industrial development in North Dakota and to that extent we hold that such municipality may acquire real estate, may set up a business enterprise directed specifically toward that purpose.

Having acquired such real estate or such business enterprise, the municipality would be authorized to sell to private individuals such real estate or business enterprise provided that such sale was made for the full fair value of said property or enterprise. They could likewise lease such site or such enterprise to a private concern provided that the lease represents a full and fair return for the property. They would not be permitted to make a gift of such real estate or enterprise to any private concern and any sale or lease would have to be such that there would be no element of donation or gift or the lending of its credit to such private enterprise.

I believe this summary of our opinion answers all your questions.

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