

**OPINION
53-83**

March 2, 1953 (OPINION)

MUNICIPALITIES

RE: Operation of Public Utility

We have yours of February 26, 1953, presenting the following question for an opinion from this department.

Could revenue bonds be issued by a municipality for the construction of a central heating plant, whether or not it is connected with any other public utility?"

Section 40-3503 of the 1949 Supplement to the North Dakota Revised Code of 1943, provides, among others, the following provision:

Any municipality, in addition to the powers prescribed elsewhere by the laws of this state, shall have the power to:

1. Acquire by gift, purchase or the exercise of the right of eminent domain, property required to construct, reconstruct, improve, better, or extend any undertaking, whether wholly within or wholly without the municipality, or partially within and partially without the municipality, and easements, rights in lands, and water rights in connection therewith;
2. Operate and maintain any undertaking for its own use and for the use of public and private consumers and users within and without the territorial boundaries of the municipality; * * *

Section 40-3502 of the 1949 Supplement to the North Dakota Revised Code of 1943 provides as follows:

The term 'undertaking' as used in this chapter, unless a different meaning clearly appears from the context, shall mean systems, plants, works, instrumentalities, and properties used in revenue producing undertaking, or any combination of two or more of such undertakings, which are used or useful in connection with:

* * *

3. The generation, production, transmission, and distribution of natural, artificial, or mixed gas, or electric energy, for lighting, heating, and power for public and private uses; and * * *

together with all parts of any such undertaking and all appurtenances thereto, including lands, easements, rights in land, water rights, contract rights, franchises, approaches, dams, reservoirs, generating stations, sewage disposal plants,

intercepting sewers, trunk connections, other sewer and water mains, filtration works, pumping stations, and equipment."

From the above quotations from the laws of the State of North Dakota, it is the opinion of this office that any municipality may acquire and construct a central heating plant for the purpose of providing heat for public and private use, and pay for the same by the issuance of revenue bonds.

The question as to the right of a municipality to engage in such service has been dealt with at length by our supreme court in the case of Lang v. City of Cavalier, 50 N.D. 75, 228 N.W. 819.

In rendering this opinion we might mention the fact that the law governing these municipal utilities provides for certain procedure to follow which is not necessarily germane to the question asked. Any municipality that desires to engage in such an enterprise in the course of such development must comply with the detailed requirement of the statute in order to make such revenue bonds legal.

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