

OPINION
55-85

July 26, 1955 (OPINION)

MUNICIPALITIES

RE: Park Property - Authority to Lease

This will acknowledge receipt of your letter under date of July 13, 1955, requesting the opinion of this office as to whether or not the village of Sheyenne, in Eddy County, may legally lease to the United States for a period of five years one hundred twenty acres out of a quarter section of land acquired by the village several years ago for park purposes and for recreational use.

You say in your letter that Congress has appropriated fifty thousand dollars for an "irrigated development farm" near Sheyenne, that "it is contemplated to use the land that the village of Sheyenne still does not use for park purposes as part of this development farm" and "that the Bureau of Reclamation desires to enter into a lease for a period of five years, with an option for a further time, in order to develop this farm."

We are advised that the term "development farm" means a farm operated under the guidance of the bureau of reclamation to demonstrate the benefits of irrigation and to determine the most beneficial use of irrigation water in the area where the farm is located and elsewhere where similar soil types are found.

We take it for granted that the title to the land in question is vested, as you say in your letter, in the village of Sheyenne, and not in a park district created therein pursuant to the provisions of chapter 40-49 of the 1943 code.

Section 40-0101 of the 1943 Revised Code provides that "a municipal corporation" or Municipality" shall include all cities, towns, and villages organized under the laws of the state, but shall not include any other political subdivision." Section 40-0501 of the Revised Code enumerates powers of municipal corporations. Subsection 55 of section 40-0501 provides that "the governing body of a municipality shall have power to acquire by lease, purchase, gift, condemnation, or other lawful means, and to hold in its corporate name for use and control as provided by law, both real and personal property and easements and right-of-way within or without the corporate limits for all purposes authorized by law or necessary to the exercise of any power granted."

Subsection 56 section 40-0501 provides that "the governing body of a municipality shall have the power to convey, sell, dispose of, or lease personal and real property of the municipality as provided in this title." (Title 40 - Municipal Corporations).

Section 11-2708 of the 1943 Revised Code provides that a board of county commissioners may set aside and transfer to any municipality for park and recreational purposes and land which the county has

acquired through tax sale proceedings.

Section 40-0102 of the Revised Code provides that "a municipality may be sued, contracted with, acquired and hold real and personal property for corporate purposes.

Subsection 59 of section 40-0501 of the 1953 Supplement to the North Dakota Revised Code of 1943 authorizes a municipal corporation:

"To accept aid from, cooperate and contract with, and to comply with and meet the requirements of any federal or state agency for the establishment, construction and maintenance of public works, including dams and reservoirs for municipal water supply, for water conservation, for flood control, for the prevention of stream pollution, or for sewage disposal; and in furtherance thereof to acquire by purchase, lease, gift or condemnation the necessary lands, rights-of-way and easements for such projects, and to transfer and convey to the state of federal government, or any agency thereof, such lands, rights-of-way and easements in consideration of the establishment and construction of, an the public benefits which will be derived from any such project."

It is an established rule of law that a municipal corporation possesses such powers only as are by statute expressly granted and such as may be reasonably implied as necessary to the declared purposes of such corporation. A village is not authorized under any statute of this state to lease for farming land acquired for purposes authorized by law. But if and when land owned by a municipal corporation is not used or needed for the purposes for which acquired, it is our opinion that such land may be leased for any lawful use beneficial to the municipality and its inhabitants. It is our opinion that leasing such land is merely incidental to the right of ownership thereof pending need for its use for the purpose for which it was acquired.

It is our opinion that the village of Sheyenne may lease to the United States the one hundred twenty acres of land not used for the purpose for which is was acquired, but such lease may be terminated when the village needs the premises for such purpose.

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