

OPINION
55-87

August 8, 1955 (OPINION)

MUNICIPALITIES

RE: Power to Conduct Non-Profit Real Estate Business

Your city attorney has requested that this office transmit an opinion to you on the following question:

"Is it within the powers of a Municipal Government, to acquire real property within the existing city limits, cause sewer and water improvements to be made thereon and subsequently sell it in parcels for home buildings sites, on a non-profit basis?"

A search of the statutes and constitutional provisions does reveal authority for a municipality to buy real property (40-0501 (55)-1943 N.D.R.C.), to deal in certain businesses not involving a loan of municipal credit or aid to private individuals or associations (Section 185, Constitution), and to sell real property (40-0501 (56)). These provisions, however, are qualified by the statutory requisites of "purposes authorized by law", "appropriation of money for corporate purposes only", and of course, general inhibitions against ultra vires acts.

Although it is feasible that the general welfare might, under the facts, be well served by your city's purchase, development and re-sale to private individuals of certain properties, we find no statutory authority, express or implied, nor judicial authority, declaring this a "municipal purpose" and empowering a city to so act. We do find, however, in *Hayward v. Board of Trustees*, 20 Colo. 33, 36 Pac. 795, words to the effect that a city cannot lawfully engage in the business of buying, selling, or dealing generally in real estate, either as principal or broker. Thus we conclude that your city does not have the power to acquire property for the purpose of re-sale for home building sites, regardless of the manner of financing, or regardless of the fact that such activities would be conducted on a non-profit basis. If, of course, a municipal purpose such as slum clearance or industrial development could be shown, our opinion would be different.

LESLIE R. BURGUM

Attorney General