

**OPINION**  
**56-84**

May 22, 1956 (OPINION)

MUNICIPAL IMPROVEMENTS

RE: Financing

This is in reply to your letter of May 11, 1956, requesting an opinion of this office in regard to financing a part of the cost of sewer, water, or parking lot municipal improvements by a pledge of service charges.

You refer us specifically to chapter 286 of the 1951 Session Laws (section 40-2216 of the 1953 Supplement to the North Dakota Revised Code of 1943) and ask in connection therewith whether it is mandatory to state in the Resolution of Necessity the fact that the municipality intends to pay a portion of the cost by means of service charges for the use of the improvement.

The only authority we find generally for the pledging service charge revenues to the payment of cost of improvements is the revenue bond law (which is clearly inapplicable to the question presented) and the statute you cite.

This statute provides in part: "A municipality constructing a sewer or water improvement or a parking lot under the special assessment method may resolve in the resolution required by section 40-2215 that a portion of the cost of the improvement shall be raised by service charges for the use of the improvement. If the municipality so resolves, it may determine, in its resolutions, ordinances, and other proceedings relating to the levying of special assessments and the issuing of warrants to pay the cost of such improvement, the portion of such cost to be assessed specially against any property specially benefited and cause to be assessed only the portion so determined.\*  
\*"

The statute then provides the procedure for the pledge of revenue. Taking the statute at face value it would appear to grant the power to so pledge such revenues only upon fulfillment of the condition of making such provision in the resolution of necessity. It is therefore our opinion that if the Resolution of Necessity adopted with reference to the issue fails to state that a portion of the cost shall be raised by service charges, such municipality cannot so pledge service charge revenues.

LESLIE R. BURGUM

Attorney General