

N.D.A.G. Letter to Rohrich (Sep. 30, 1985)

September 30, 1985

Mr. F. C. Rohrich
Emmons County State's Attorney
P. O. Box 657
Linton, North Dakota 58552

Dear Mr. Rohrich:

Thank you for your letter of September 4, 1985, wherein you inquired whether the county commissioners could utilize the 1974 Linton Hospital Mill Levy to finance the recent roof repairs of the hospital.

N.D.C.C. §23-18-04 provides as follows:

23-18-04. PROCEEDS OF TAX PLACED IN SPECIAL FUND --USE.
The proceeds of the tax provided for by this chapter shall be placed in a separate fund by the county treasurer and shall be used exclusively for the construction and equipment of a nonsectarian county or community hospital, . . . as applicable, and shall be kept separate and apart from the other moneys of the county. (Emphasis supplied.)

In a letter dated June 12, 1984, you requested an opinion from this office concerning whether the 1974 Linton Hospital Mill Levy may continue after the obligation has been satisfied, provided that the money derived from the mill levy be used exclusively to maintain the building and equipment of the hospital. On August 20, 1984, this office expressed its opinion that the fund authorized by N.D.C.C. Ch. 23-18 is in the nature of a sinking fund and available only for the retirement of the debt. Consequently, you were advised that the mill levy must cease when the obligation has been paid in full and cannot be used to maintain the building and equipment of the Linton Hospital.

Consistent with this office's August 20, 1984 response, "construction and equipment" must be interpreted as contemplating only the initial "construction and equipment" costs of the Linton Hospital and not subsequent maintenance or repair costs. Such an interpretation is also consistent with the ordinary meaning of "construction."

N.D.C.C. §1-02-02 provides that words not specifically defined in the North Dakota Century Code are to be understood in their ordinary sense. "Construction" has been defined in its ordinary sense to mean "the creation of something new, rather than the repair or improvement of something already existing." Cabell v. City of Portland, 57 P.2d 1292, 1297 (Ore. 1936). Similarly, it has been held that where a roof had burned off a building, operations which were intended to restore it to its original condition constituted

"repairs" rather than "construction." Travelers Indem. Co. v. Wilkes County, 102 Ga.App. 362, 116 S.E.2d 314 (1960).

It is my opinion that the repair of the Linton Hospital roof does not constitute "construction" as contemplated by N.D.C.C. §23-18-04. As such, the mill levy used to finance the original "construction and equipment" of the Linton Hospital cannot be utilized to fund the recent roof repairs.

If you wish to discuss this matter further, please do not hesitate to contact me.

Sincerely,

Nicholas J. Spaeth

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