

N.D.A.G. Letter to Diemert (March 19, 1987)

March 19, 1987

Mr. Daniel G. Diemert
Ellendale City Attorney
P. O. Box 39
Ellendale, North Dakota 58436

Dear Mr. Diemert:

Thank you for your letter of February 24, 1987, inquiring as to the ability of a city to issue general obligation bonds for the purpose of providing funding to a park district so as to allow the park district to build a public swimming pool.

N.D.C.C. § 21-03-06 allows political subdivisions to borrow money through the issuance of bonds. Subsection 6 of this statute allows park districts to borrow money by the issuance of bonds "to provide for acquiring, laying out, and improving parks. . . ." Although there is no mention of swimming pools in subsection 6, one assumes that the construction or provision of a swimming pool is one method of improving a park. Indeed, N.D.C.C. § 40-49-04 indicates that the term "park" as used in any statute relating to park districts includes public recreation areas and sites or areas devoted to use and accommodation of the public. Utilizing this definition of the term "park," it would appear that N.D.C.C. § 21-03-06(6) allows a park district to issue bonds to build a public swimming pool. However, as noted in your letter, the indebtedness incurred by the park district for this purpose may not exceed one percent of the value of the taxable property in that park district.

N.D.C.C. § 21-03-06(2)(f) allows a city to issue such bonds to provide for "acquiring, laying out, and improving parks. . . ." Again, swimming pools are not mentioned in this particular statute. Although the definition of "park" at N.D.C.C. § 40-49-04 is not directly applicable, I believe, in the absence of a specific definition of this term within N.D.C.C. Title 21, that the definition previously mentioned should be applied in this instance. Thus, the improvement and laying out of parks as discussed in N.D.C.C. § 21-03-06 (2)(f) would include public swimming pools.

In summary, both a park district and a city have the authority to issue bonds under N.D.C.C. § 21-03-06 for the purpose of building a public swimming pool. The authority of a city to engage in this act is not conditioned upon the nonexistence of a park district. Thus, both entities enjoy this authority.

However, your letter suggests that the city intends to issue the bonds with the proceeds going directly to the park district so as to enable the park district to build a swimming pool. N.D.C.C. § 21-03-38 requires all borrowed money upon issuance of the bonds to be paid into the treasury of the entity "borrowing it" to be kept there until used for the purpose for

which it was borrowed "and for no other purpose." No provision exists in N.D.C.C. Ch. 21-03 allowing one entity to issue bonds and allowing another entity to use the proceeds of the money for a particular purpose. However, N.D.C.C. § 54-40-08(1) does allow political subdivisions to agree with one another for joint or cooperative action in carrying out any function or duty assigned to one or more of them. In carrying out the joint or cooperative action, funds of any political subdivision to the agreement may be expended. The provisions of N.D.C.C. § 54-40-08(1) appear to provide a method whereby the city and park district may jointly and cooperatively cause the construction of a new swimming pool.

Sincerely,

Nicholas J. Spaeth

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