

N.D.A.G. Letter to Wold (July 29, 1987)

July 29, 1987

Mr. James W. Wold
Griggs County State's Attorney
P.O. Box 541
Cooperstown, ND 58425

Dear Mr. Wold:

Thank you for your letter of June 24, 1987, inquiring as to a county multi-year lease purchase agreement.

In your first question, you ask whether a multi-year lease purchase agreement entered into by a county violates the provisions of N.D.C.C. § 21-01-03. N.D.C.C. § 21-01-03 provides, in part, as follows:

21-01-03. MAXIMUM AMOUNT OF WARRANTS OR
INDEBTEDNESS--VIOLATION OF PROVISIONS--LIABILITY --PENALTY. .
. . No indebtedness shall be incurred, and no undertakings or expenditures
authorized, in excess of unencumbered uncollected taxes which have been
levied during the current year plus the unencumbered uncollected taxes of
the four preceding years. Any warrant issued, contract entered into, or
purported indebtedness incurred, in contravention of this section shall be
null and void.

(Emphasis supplied.)

N.D.C.C. § 24-05-04 specifically authorizes counties to enter into lease purchase agreements for road machinery within the limitations set forth in that section. N.D.C.C. § 24-05-04 limits the duration of such a lease purchase agreement to five years. The issue, therefore, is whether a multi-year lease purchase agreement that complies with N.D.C.C. § 24-05-04 violates the indebtedness limitation of N.D.C.C. § 21-01-03.

In response to a similar question involving N.D.C.C. § 21-01-03, then Assistant Attorney General Gerald W. Vande Walle stated as follows:

I can find no official opinions of the Attorney General with respect to the purchasing on contract of equipment or furniture to be paid for over a period of years. I am, however, enclosing a copy of a letter dated July 15, 1950, addressed to Samuel Sgutt, clerk of the Fargo Park Board, regarding the making of installment contracts by the park board. It would appear, off hand, that the purchasing of an item on an installment contract by a taxing district

would, in effect, be a method of financing not included within the statutory provisions governing financing in taxing districts .

Letter from Assistant Attorney General Gerald W. Vande Walle to Charles A. Feste (May 15, 1963).

After a thorough review of the governmental finance provisions in the North Dakota Century Code, it is my belief that the above-quoted statement is generally a correct interpretation of the law. However, I believe that the proper scope of the above conclusion is limited to instances where the installment contract is specifically authorized by statute.

Lease purchase agreements involving county road machinery are specifically authorized in N.D.C.C. § 24-05-04. It is my opinion, therefore, that such an agreement would not be subject to the limitations of N.D.C.C. § 21-01-03.

In your letter, you set forth a provision of the lease purchase agreement that essentially terminates the lease if funds are not budgeted or appropriated in any fiscal year. My above analysis dispenses with the necessity of discussing whether this particular clause saves an otherwise invalid agreement. Nevertheless, I strongly recommend that such termination provisions be included in all governmental contracts that exceed one budgetary period in duration.

Your second question is whether the township may obligate a sum to be paid annually to the county which is to contribute to the county's purchase of road machinery or partial payment of a county's annual lease payment on a lease purchase agreement covering road machinery. The powers of the North Dakota township are limited to those specifically given by law and necessary to the exercise of those express powers. N.D.C.C. § 58-03-02. No express authority can be found providing the township with the authority to use township funds for the maintenance of county roads outside of the township's roads. N.D.C.C. chs. 58-03, 24-06.

However, political subdivisions of the state are authorized by law to enter into agreements with joint or cooperative action on a cost sharing basis or otherwise to carry out any function or duty which may be authorized by law or assigned to one or more of them. As part of this joint or cooperative agreement, either political subdivision may expend its own funds so as to jointly and cooperatively carry out such function or duty. N.D.C.C. § 54-40-08(1). Thus, the arrangement described in your letter can only occur as part of a joint cooperative agreement entered into by the township and the county pursuant to N.D.C.C. § 54-40-08(1).

Your third question relates to whether the anticipated payments from the township may be added to the "unencumbered uncollected taxes which have been levied during the current year plus the unencumbered uncollected taxes of the four preceding years," N.D.C.C. § 21-01-03, for purposes of determining the indebtedness limitation for a taxing district. Inasmuch as my response to your first question indicates that the limitations of N.D.C.C. § 21-01-03 are not applicable to lease purchase agreements involving road machinery, it is

not essential that I answer your third question. However, it would appear to me that if the Legislature desired to include revenues other than those specifically mentioned in N.D.C.C. § 21-01-03 for the purpose of determining a taxing district's indebtedness limitation that it would have done so.

Sincerely,

Nicholas J. Spaeth

ja