

N.D.A.G. Letter to Luptak (Aug. 17, 1987)

August 17, 1987

Mr. James Luptak
Director
Energy Development Impact Office
State Capitol
Bismarck, ND 58505

Dear Mr. Luptak:

Thank you for your letter of July 8, 1987, relating to the Energy Development Impact Office's grant to the city of Belfield to be used to facilitate the settlement of that city's debt. In your letter, you indicate that the city has requested that the Energy Development Impact Office allow the grant to be used to pay off the city's share of special assessments and that the remaining funds be applied to paying off the bonds held by First National Bank of Belfield for water and sewer districts No. 6 and No. 8. You express concern that if Belfield applies a portion of the grant money to pay off the bonds held by First National Bank that other creditors might object and pursue legal action against your office and the city.

N.D.C.C. § 57-62-06 sets forth the statutory guidelines on impact grants:

57-62-06. LEGISLATIVE INTENT AND GUIDELINES ON IMPACT GRANTS. The legislative assembly intends that the moneys appropriated to, and distributed by, the energy development impact office for grants are to be used by grantees to meet initial impacts affecting basic governmental services, and directly necessitated by coal development and oil and gas development impact. As used in this section, "basic governmental services" do not include activities relating to marriage or guidance counseling, services or programs to alleviate other sociological impacts, or services or facilities to meet secondary impacts. All grant applications and presentations to the energy development impact office shall be made by an appointed or elected government official.

Obviously, a grant to a city to be used to alleviate a financial crisis and avoid bondholder foreclosure falls within the stated guidelines.

As long as the Energy Development Impact Office has complied with the statutory guidelines regarding grants to political subdivisions, I cannot envision that a legal action would be pursued against your office. I understand that the Energy Development Impact Office's only condition regarding the Belfield grant is that the money be used to alleviate the city's financial problems.

Certainly, the two uses of the funds set forth in your letter would fall within the Energy Development Impact Office's general condition that the grant money be used to ease Belfield's financial crisis. Whether the specific uses of the funds violate the rights of other bondholders would require an analysis of the relevant bond documents. If paying off the bonds held by First National Bank of Belfield violates the city's contractual obligations as set forth in the bond documents, other creditors may have a legal cause of action against the city. Additionally, if the city eventually seeks protection from its creditors under chapter 9 of the Bankruptcy Code, such a payment to one creditor may violate the law against preferential transfers set forth at 11 U.S.C. 547(b). Obviously, this is a matter which the city must consult with its counsel and determine a lawful use of the grant money that falls within the general guidelines established by the Energy Development Impact Office.

If you have any further questions on this matter, please do not hesitate to contact me.

Sincerely,

Nicholas J. Spaeth

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