

N.D.A.G. Letter to McLean (Jan. 9, 1990)

January 9, 1990

Mr. Stephen McLean, Ltd.
City Attorney
City Hall in Oakes Armory
124 South 5th Street
Oakes, ND 58474

Dear Mr. McLean:

Thank you for your December 7, 1989, letter requesting my opinion as to whether the city of Oakes may remit the proceeds of a mill levy, imposed pursuant to N.D.C.C. § 40-57.4-04, to Oakes Enhancement, Inc., ("OEI") for paying the principal and interest on mortgage debt incurred to purchase and improve real estate for economic development.

It is my opinion that pursuant to N.D.C.C. ch. 40-57.4, the city of Oakes may remit such funds to OEI provided that the transaction is conducted pursuant to a contract as required by N.D.C.C. § 40-57.4-04. N.D.C.C. § 40-57.4-04 provides, in part:

In lieu of establishing a job development authority, the governing body of a city where an active industrial development organization exists may levy a tax not exceeding the limitation in subsection 28 of section 57-15-10. The funds from the alternative levy may be used to enter into a contract with the industrial development organization for performance of the functions of a city development authority.

N.D.C.C. § 40-57.4-03 is relevant in determining the powers and duties of an industrial development organization acting in lieu of a job development authority under N.D.C.C. § 40-57.4-04. N.D.C.C. § 40-57.4-03 provides:

The city job development authority shall use its financial and other resources to encourage and assist in the development of employment within the city. In fulfilling this objective, the job development authority may exercise the following powers:

1. To make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority.
- ...
5. To acquire by gift, trade, or purchase, and to hold, improve, and dispose of real and personal property.

This statute authorizes the governing body of a city and an industrial development organization, acting in lieu of a city development authority, to enter into a contract to "hold, improve and dispose of real" property. N.D.C.C. § 40-57.4-03(5).

I hope that the above discussion will be of help in answering your questions.

Sincerely,

Nicholas J. Spaeth

cv