

N.D.A.G. Letter to Reichert (Aug. 19, 1991)

August 19, 1991

Ronald A. Reichert
City Attorney
City of Medora
34 E First Street, Box K
Dickinson, ND 58602-8305

and

Jay V. Brovold
Billings County State's Attorney
P.O. Box 187
Medora, ND 58645

Gentlemen:

Thank you for your July 12, 1991, letter in which you ask whether the City of Medora (the "City") and Billings County (the "County") may, through separate contracts with the Roosevelt Custer Regional Council for Development (the "Roosevelt Custer Regional Council"), participate in the buydown of the interest rate on a loan to the Theodore Roosevelt Medora Foundation (the "Foundation") pursuant to the Partnership in Assisting Community Expansion Program (the "PACE Program") established by N.D.C.C. ch. 6-09.14.

Participants in a PACE Program buydown include a lead financial institution, the Bank of North Dakota and the local community. The term "community" means "the city or county in which an eligible business is located, or a local development corporation, community organization, or any other group whose interest is in the economic growth of the area." N.D.C.C. § 6-09.14-01(2). The local community's contribution to the buydown may come from "a local development corporation, contributions, community funds, future dedicated tax programs, or any other community source." N.D.C.C. S 6-09.14-04(2).

You have advised me that neither the City nor the County is levying a tax for a job development authority or for the support of an industrial development organization. Rather, the City and the County propose to use other revenues available "to them to make individual contributions of \$150,000 to the Roosevelt Custer Regional Council which would, in turn, enter into an agreement to use those moneys to buy down the interest rate on a loan to the Foundation under the PACE Program. The Foundation will use the loan proceeds to complete the Burning Hills Amphitheater Project presently under construction.

Roosevelt Custer Regional Council is a regional council established pursuant to N.D.C.C. § 54-40-08(l) and N.D.C.C. ch. 54-40.1 and incorporated pursuant to N.D.C.C. ch. 10-24 (the Nonprofit Corporation Act) as a 501(c)(3) corporation.

In a letter dated March 11, 1976, then Chief Deputy Attorney General Gerald W. VandeWalle stated that it was the opinion of this office that a contract among political subdivisions pursuant to N.D.C.C. § 54-40-08(l) is an agreement among the participating political subdivisions which does not involve N.D. Const. art. X, § 18 because the agreement is among governmental entities and contributions to a regional council organized pursuant to the agreement would not be contributions within the meaning of N.D. Const. art. X, § 18.

Section 54-40-08(l) provides in part that political subdivisions "may enter into agreements with one another for joint or cooperative action . . . to carry out any function or duty which may be authorized by law or assigned to one or more of them."

N.D. Const. art. X, § 18 provides in part as follows:

The state, any county or city may make internal improvements and may engage in any industry, enterprise or business, . . . but neither the state nor any political subdivision thereof shall otherwise loan or give its credit or make donations to or in aid of any individual, association or corporation except for reasonable support of the poor, nor subscribe to or become the owner of capital stock in any association or corporation.

Under N.D. Const. art. X, § 18, a county or a city may make donations only in connection with the county's or the city's engaging in any permissible industry, enterprise or business. *Gripentrog v. City of Wahpeton*, 126 N.W.2d 230, 237-238 (N.D. 1964).

I agree with the March 11, 1976 opinion to the extent that it establishes the proposition that the contribution of monies by the County and the City to the Roosevelt Custer Regional Council is not prohibited by N.D. Const. art. X, § 18. However, this then raises the question whether the Roosevelt Custer Regional Council has the power to expend its funds to buy down the interest rate on a loan to the Foundation under the PACE Program.

A regional planning council has the statutory authority to perform those powers and duties set forth in N.D.C.C. § 54-40.1-04, which generally relate to planning and providing technical assistance. Any additional authority which a regional council may have arising from N.D.C.C. § 54-40-08(l) is limited to doing those things which the participating political subdivisions may do directly.

Therefore, it is my opinion that since the County and the City may not directly contribute funds to the Foundation through the PACE Program, the Roosevelt Custer Regional Council likewise may not do so under the authority of N.D.C.C. § 54-40-08(l).

Sincerely,

Nicholas J. Spaeth

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