

N.D.A.G. Letter to Ratcliff (Nov. 15, 1991)

November 15, 1991

Ms. Phyllis Ratcliff
Griggs County State's
Attorney's office
PO Box 541
Cooperstown, ND 58425

Dear Ms. Ratcliff:

Thank you for your October 11, 1991, letter requesting a written opinion regarding whether a county may provide funds to a private local hospital.

The loaning of funds by a county to a private local hospital raises the issue of whether such an action is constitutional under North Dakota Constitution art. X, § 18:

The state, any county or city may make internal improvements and may engage in any industry, enterprise or business, not prohibited by article XX of the constitution [article XX was repealed in 1932], but neither the state nor any political subdivision thereof shall otherwise loan or give its credit or make donations to or in aid of any individual,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.

N.D. Const. art. X, § 18. The North Dakota Supreme Court has clarified the meaning of this constitutional provision as applied to cities. The North Dakota Supreme Court states:

[North Dakota Constitution art. X, § 18] does not prohibit the making of loans or giving of credit or making donations in connection with a city's engaging in any industry, enterprise, or business except engaging in liquor traffic [Article XX regarding the traffic of liquor was repealed in 1932]. What it does prohibit is for a city "otherwise" to make loans or give its credit or make donations. In other words, making loans or giving credit may be done in connection with the city's engaging in any permissible industry, enterprise, or business, but not otherwise.

Gripentrog v. City of Wahpeton, 126 N.W.2d 230, 237-38 (N.D. 1964). Although Gripentrog involved a city, the Supreme Court's reasoning is equally applicable to counties. In a subsequent case, the North Dakota Supreme Court indicated that an industry, enterprise, or business is permissible if it is for a public purpose. Kelly v. Guy, 133 N.W.2d 853 (N.D. 1965).

In a February 11, 1991 letter to Representative Clarence Martin, I stated that it is my opinion that the state, a county, or a city may loan or give its credit or make donation only through an industry, business, or enterprises in which it is engaged. I also stated that the industry, business, or enterprise must be engaged in a public purpose. "A public purpose or public business has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity, and contentment of all the inhabitants or residents within a given political division. . . ." Gripentrog v. City of Wahpeton, 126 N.W.2d 230, 237 (N.D. 1964), quoting from Green v. Frazier, 176 N.W. 11 (N.D. 1920).

If a county's purpose in loaning money to a private hospital is to promote the public health, safety, morals, general welfare, security, prosperity, or contentment of all the inhabitants or residents within the county, then the money was loaned to achieve a public purpose, and is not in violation of N.D. Const. art. X, § 18.

It is a close question whether a county must have specific statutory authority to loan its funds to a private hospital in addition to meeting the requirements of N.D. Const. art. X, § 18. Arguably, a county has the authority to loan county funds to a private local hospital based on its power to contract. See N.D.C.C. § 11-10-01.

In conclusion, it is my opinion that a county is not clearly prohibited from loaning money to a private local hospital. Your letter indicates that the money loaned by the county came from the county's emergency fund. I was not made aware, in my conversation with Commissioner Wagoner, that emergency fund moneys were to be used to make the loan. I was under the impression that general fund moneys would be used. The expenditure of funds in a county's emergency fund is limited to expenditure for purposes indicated in N.D.C.C. §§ 4-33-11(l), 24-05-20, and 57-15-28. These sections do not appear to allow the expenditure of emergency funds for the purpose of making a loan to a private local hospital.

I am sorry if there was any misunderstanding in this matter. Please contact me if I may be of further assistance.

Sincerely,

Nicholas J. Spaeth

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