

N.D.A.G. Letter to Belisle (April 7, 1992)

April 7, 1992

Mayor Eugene Belisle
City of Riverdale
Box 507
Riverdale, ND 58565

Dear Mayor Belisle:

Thank you for your February 10, 1992, letter requesting an opinion regarding whether a city may loan or give money to a school district.

N.D. Const. art. X, § 18 states:

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.

N.D. Const. art. X, § 18 prohibits a political subdivision from loaning or giving its credit to or in aid of any individual, association, or corporation unless it is for the reasonable support of the poor. The terms, "individual," "association," and "corporation" in N.D. Const. art. X, § 18, refer to private individuals, associations, and corporations. Thus, in discussing the procedure used in determining whether the use of the proceeds of a bond issue would violate N.D. Const. art. X, § 18, the North Dakota Supreme Court stated, "it is next in order to determine whether the proceeds of the bonds issued . . . are to be used for promoting and conducting a private business for the benefit of certain individuals, associations, or private corporations, or are the proceeds to be used for a public purpose by . . . the state, for the promotion of the general welfare of all the people of the state." Green v. Frazier, 176 N.W. 11, 17-18 (N.D. 1920). Similarly, this office previously has concluded that a rural fire district is not an individual, association, or corporation, as those terms are used in N.D. Const. art. X, § 18. 1983 N.D. Op. Att'y Gen. 53. Also, in a March 11, 1976, letter to Mr. Russell Staiger, then Chief Deputy Attorney General Gerald W. VandeWalle stated that a contribution by a county to a regional planning council is not a contribution within the meaning of N.D. Const. art. X, § 18. A school district is a political subdivision and not a private individual, association, or corporation. Consequently, N.D. Const. art. X, § 18 does not prohibit a loan or a grant from a city to a school district.

The North Dakota Constitution states, "[t]he legislative assembly shall provide by law for the establishment and the government of all political subdivisions. Each political subdivision shall have and exercise such powers as provided by law." N.D. Const. art. VII,

§ 2. Cities are political subdivisions. The North Dakota Supreme Court has recognized that cities are agencies of the state and have only the powers expressly conferred on them by the legislature or such as may be necessarily implied from the powers expressly granted. Megarry Bros. v. City of St. Thomas, 66 N.W.2d 704, 709 (N.D. 1954). Thus, whether a city has the authority to loan or give money to a school district is determined by whether a statute exists which expressly confers such authority on cities or from which such authority can be necessarily implied.

The rule of strict construction applies to determining the existence of municipal authority. Haugland v. City of Bismarck, 429 N.W.2d 449 (N.D. 1988). North Dakota statutes do not expressly or impliedly give cities the authority to lend or give money to school districts.

This office previously has analyzed the authority of political subdivisions to loan or give money to other political subdivisions by looking to N.D.C.C. § 54-40-08.

1. Any municipality, county, park district, school district, or other political subdivision of this state, upon approval of its respective governing body, may enter into agreements with one another for 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, and to expend funds of such municipality, county, park district, school district, or other political subdivision pursuant to such agreement, to use unexpended balances of their respective current funds, to enter into lease-option to buy and contract for deed agreements between themselves and with private parties, and to accumulate funds from year to year for the provision of services and facilities, and to otherwise share and contribute property in accordance with such agreement in jointly and cooperatively carrying out such function or duty.

N.D.C.C. § 54-40-08(1) (emphasis added).

It is my opinion that N.D.C.C. § 54-40-08(1) must be construed by looking to other sections of N.D.C.C. ch. 54-40. Particularly, N.D.C.C. § 54-40-01, states, in part, "[t]wo or more governmental units or municipal corporations . . . may jointly or cooperatively exercise their respective separate powers, or any power common to the contracting parties. . . ." N.D.C.C. § 54-40-01. Interpreting the underlined language in N.D.C.C. § 54-40-08 in light of the language in N.D.C.C. § 54-40-01, I conclude that each political subdivision entering into a joint agreement pursuant to N.D.C.C. § 54-40-08 must have separate statutory authority to carry out the function or duty that is the subject of the joint agreement. See 1973 N.D. Op. Att'y Gen. 150 (chapter 54-40 only grants authority to do jointly what may be done separately). See also Dahl v. City of Grafton, 286 N.W.2d 774 (N.D. 1980) and City of Fargo v. Cass County, 286 N.W.2d 494 (N.D. 1979).

Thus, it is my opinion that the authority of a political subdivision to loan or give money to another political subdivision may not be implied merely from the very general language of

N.D.C.C. § 54-40-08. Such authority must be derived from a statute which either specifically confers the authority, or from which such authority can be necessarily implied.

Given the foregoing analysis, it is my opinion that a loan or grant of money from a city to a school district does not violate article X, section 18 of the North Dakota constitution. However, it is further my opinion that a city may not lawfully loan or give money to a school district because there is no specific statutory authority nor any statute from which authority can be necessarily implied for a city to loan or give money to a school district.

Sincerely,

Nicholas J. Spaeth

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