

**OPINION
72-365**

May 10, 1972 (OPINION)

Mr. John A. Zuger

City Attorney

Bismarck, ND

RE: State - Uniform Relocation Assistance Act - Compliance

This is in reply to your letter of March 24, 1972, requesting an opinion of this office regarding the ability of the state of North Dakota to comply with the legal requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91-646; 42 USC 4601). You call our attention to the effect of same and of specific provisions thereof.

You enclose a copy of a legal opinion prepared by the Office of the Regional Counsel of the Department of Housing and Urban Development with regard to the viewpoint of that office concerning the ability of certain North Dakota state agencies to comply with the Uniform Relocation Act.

You inform us that "HUD's General Counsel has informed the Office of the Regional Counsel in Denver that the statutes cited in the Regional Counsel's opinion appear to pertain only to the urban renewal and public housing programs and do not explicitly cover any other HUD-assisted programs. You indicate further that "HUD's" General Counsel has requested that an opinion be issued from our office with regard to the conclusion that certain other federally-shared programs are covered by the North Dakota statutes and that local agencies carrying out such programs can legally comply with the provisions of the Uniform Relocation Act.

You state that it appears that the main thrust of the Regional Counsel's opinion was directed towards a discussion of the actions of housing authorities and urban renewal agencies, and do not specifically delve into any substantive discussion with regard to the ability of North Dakota cities, towns and special districts to comply with the procedural requirements of the Act. You ask therefore our discussion of this additional question.

You indicate further that the office of the Regional Counsel's Office in Denver stands ready to provide you with any assistance possible in answering questions or providing additional information during the preparation of our opinion.

We are enclosing herewith xerox copy of our opinion dated January 10, 1972, to John Greenslit, State Liaison Officer of the North Dakota State Outdoor Recreation Agency. It goes quite extensively into the ability of the various state agencies to comply with the provisions of federal enactment to which you refer in the acquisition of lands by purchase, gift and eminent domain. While, of course, cities, townships, school districts, and other quasi-municipal entities or

subdivisions of the state all do generally operate under different statutory foundations, and grants of authority, we would feel that the same general principles would in most instances apply and that in most instances compliance with the provisions of the federal enactment will be possible.

As stated in our opinion with regard to state agencies, the state of North Dakota has not to the current date enacted specific legislation adopting and specifying compliance with the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91-646; 42 USC 4601). However, as indicated in our prior opinion heretofore referred to it has as of 1969 adopted section 32-15-22.1 of the 1971 Supplement to the North Dakota Century Code which obviously provides for compliance in the course of eminent domain proceedings with the predecessor of the currently considered federal enactment. While we do not purport to construe federal statutes, there has not been a great deal of change in the substance of the federal enactment by reason of the adoption of the current revisions, amendment and changes in same in this respect. We note that said section 32-15-22.1 is also considered in the Regional Counsel's opinion.

The breadth of application of said section 32-15-22.1 can perhaps be best understood by considering the context in which it appears. Thus rather than being a part of the State Government Title, or the Municipal Government Title, it is a part of the "Judicial Remedies" Title, "Eminent Domain" Chapter of the North Dakota Century Code. It thus prescribes the judicial remedy of eminent domain for any litigant in our courts rather than being limited to either state, municipal or subdivision condemnors. This breadth of application can perhaps be best illustrated by considering only as an example, subsections 2 and 3 of section 32-15-02, another part of that chapter. Such part provides:

* * *Subject to the provision of this chapter, the right of eminent domain may be exercised in behalf of the following public uses:

* * *

2. Public buildings and grounds for the use of the state and all other public uses authorized by the legislative assembly of the state;
3. Public buildings and grounds for the use of any county, city, park district, village or school district; canals, aqueducts, flumes, ditches, or pipes for the use of the inhabitants of any county, city, or village, or for draining any county, city, or village, raising the banks of streams, removing obstructions therefrom and widening, deepening, or straightening their channels, roads, streets, and alleys, and all other uses for the benefit of any county, city, park district, or village, or the inhabitants thereof, which may be authorized by the legislative assembly, but the mode of apportioning and collecting the costs of such improvement shall be such as may be provided in the statutes by which the same may be authorized;

* * *."

This statute is, of course, not the only statute of the state granting to or specifying municipal or subdivisional entities having authority to proceed under the judicial remedy specified in said chapter 32-15 but does at least illustrate the extreme breadth of the scope of entities necessarily affected by the terms of said section 32-15-22.1. We also think it obvious at this point that said section 32-15-22.1 applies equally to cities and state agencies.

As heretofore indicated, it is possible, insofar as said section 32-15-22.1 was designed in view of a prior rather than the present federal statute, there may be some minor discrepancies between what it covers, and certain items that may necessarily have to be paid to comply with the federal enactment. We cannot feel that this will result in an actual problem on a realistic basis. As pointed out in our opinion of January 10, 1972, with regard to state agencies while possibly other states and federal agencies may conduct eminent domain proceedings with strict specifications as to the step-by-step handling of the case, including appraisals, offers, etc., and actual damages, in most instances in this state, statutes referring to such proceedings by state, municipal or subdivision entities, rely on the very general procedures, outlined in said chapter 32-15. We would thus think that the general right of counsel or the party to "settle" litigation, enter into stipulations, etc., would be sufficient to enable entities wishing to clear up such discrepancies to do so quite easily.

Considering the questions relevant to purchase or other than eminent domain acquisition grants of authority, probably goes to the basic nature of the entity concerned. Illustrative of same would be the following sections of the North Dakota Century Code:

40-01-02. MUNICIPALITIES ARE BODIES CORPORATE. Municipalities shall be bodies politic or corporate under the name and style of 'city of _____' and under such name, may sue and be sued, contract and be contracted with, acquire and hold real and personal property for corporate purposes, and have a common seal which may be changed at pleasure."

11-10-01. COUNTY A CORPORATE BODY - POWERS. Each organized county is a body corporate for civil and political purposes only. As such, the county may sue and be sued, contract and be contracted with, and in all cases where lands have been granted to it for public purposes and any part thereof has been sold and the purchase money or any part thereof is due and unpaid, all proceedings necessary to recover possession of such lands or to enforce the payment of the purchase money shall be instituted in the name of the proper county."

58-03-01. POWERS OF TOWNSHIP. Each township is a body corporate and has capacity:

1. To sue and be sued;
2. To purchase and hold lands within its limits and for the

use of its inhabitants subject to the powers of the legislative assembly;

3. To make such contracts and purchase and hold such personal property as may be necessary for the exercise of its corporate or administrative powers; and
4. To make such orders for the disposition, regulation or use of its corporate property as may be deemed conducive to the interests of its inhabitants."

15-29-08. GENERAL POWERS AND DUTIES OF SCHOOL BOARD. The powers and duties of the school board of a public school district shall be as follows:

* * *

2. To organize, establish, operate and maintain such elementary and high schools as it may deem requisite and expedient, to acquire sites and construct buildings and other facilities in connection therewith, and to change the location of or discontinue such schools and liquidate the assets thereof in the manner prescribed by law; provided that no site shall be acquired or building constructed, or no school shall be organized, established, operated, maintained, discontinued, or changed in location without the approval of the state board of public school education if outside the boundary of the district."

Also of interest in this respect may be subsections 50, 55 and 59 of the North Dakota Century Code providing insofar as here applicable that:

40-05-01. POWERS OF ALL MUNICIPALITIES. The governing body of a municipality shall have the power:

* * *

0. Public buildings. To construct, operate, and maintain all public buildings necessary for the use of the municipality:
5. Real and personal property. To acquire by lease, purchase, gift, condemnation, or other lawful means and to hold in its corporate name for use and control as provided by law, both real and personal property and easements and rights of way within or without or necessary to the exercise of any power granted; the corporate limits for all purposes authorized by law

* * *

9. Public works projects. To accept aid from, cooperate and contract with, and to comply with and meet the requirements of any federal or state agency for the establishment, construction, and maintenance of public works, including dams and reservoirs for municipal water supply, for water conservation, for flood control, for the prevention of

stream pollution, or for sewage disposal; and in furtherance thereof to acquire by purchase, lease, gift, or condemnation the necessary lands, rights of way, and easements for such projects, and to transfer and convey to the state or federal government, or any agency thereof, such lands, rights of way, and easements in consideration of the establishment and construction of, and the public benefits which will be derived from any such project. Cities shall also have the power to enter into an agreement with any such government, agency, or municipality within or without this state, to hold such government, agency, or municipality harmless from any and all liability or claim of liability arising from the establishment, construction, and maintenance of such works, and to indemnify such government, agency, or municipality of any such liability sustained by it and to pay all costs of defending against any such claim; and in furtherance thereof to acquire by purchase, lease, gift, or condemnation the necessary lands, rights of way, and easements for such projects, and to transfer and convey to such government, agency, or municipality, such lands, rights of way, and easements in consideration of the establishment and construction of, and the public benefits which will be derived from any such project, or to pay the cost of the acquisition of such lands, rights of way, and easements by such government, agency, or municipality. All actions herein authorized may be taken by resolution duly adopted by the governing body of the municipality. Any and all actions and proceedings heretofore taken by any municipality which are within the authority granted by this subsection are hereby legalized and validated;

* * *."

Also, of course, of interest in this regard though in a more limited field are some of the provisions of section 40-05.1-06 of the 1971 Supplement to the North Dakota Century Code relating, of course, only to the so-called home rule cities:

40-05.1-06. POWERS. From and after the filing with the secretary of state of a charter framed and approved in reasonable conformity with the provisions of this chapter, such city, and the citizens thereof, shall, if included in the charter and implemented through ordinances, have the following powers set out in this chapter:

1. To acquire, hold, operate, and dispose of property within or without the corporate limits, and exercise the right of eminent domain for such purposes.

* * *

5. To contract with and receive grants from any other governmental entity or agency, with respect to any local, state or federal program, project or works;

* * *."

Also of interest in looking to the general background of the situation we might mention the enforceability of the so-called donee-beneficiary contract in this state (see section 9-02-04 of the North Dakota Century Code).

While we are thus not suggesting that the general authority of these entities authorizes any and all land acquisitions, contracts with the federal government, etc., we do feel that considering the specific grants of authority specified in the Regional Counsel's letter, together with this background material, does illustrate that where the specific land acquisition authority and authority to contract exists same necessarily is broad enough to authorize compliance with the federal enactment under consideration, either from the viewpoint of the contractual arrangement with federal agencies or under the general land acquisition authority.

Looking for specific examples of specific grants of authority to participate in federal programs, we note such examples as subsection 8 of section 40-57-03 of the North Dakota Century Code providing that:

40-57-03. POWERS OF MUNICIPALITY. Any municipalities in addition to the powers prescribed elsewhere by the laws of this state, shall have the power to:

* * *

8. Accept from any authorized agency of the federal government loans or grants for the planning, construction, acquisition, leasing or other provision of any project, and to enter into agreements with such agency respecting such loans or grants;

* * *."

and section 24-04-04 of the North Dakota Century Code that:

24-04-04. MUNICIPALITIES MAY AID FEDERAL HIGHWAY CONSTRUCTION. A municipality, through its governing body, wherever a federal aid highway is routed through such municipality, may participate in the financing, planning, construction and acquisition or right of way of said highway."

It would, of course, be an extremely difficult task to abstract from our Code all examples where cooperation with other governmental entities is granted to cities and similar political subdivisions of the state.

To conclude we might state that as heretofore indicated, North Dakota municipalities are given quite general power to contract, recognition as a corporate as well as strictly governmental entity, authority to acquire land by various means including in many instances by the exercise of the power of eminent domain, and, of course, authority to engage in specified public works projects. We could not, of course, suggest that North Dakota municipalities as such are authorized to engage in all projects to which federal aid program might be

applicable; however, in instances where they are authorized to engage in a particular project, their general land acquisition statutes, plus their general contractual powers are sufficiently broad to enable them to by contract or agreement bind themselves to compliance with the federal enactment in question.

HELGI JOHANNESON

Attorney General