

**LETTER OPINION**  
**93-L-129**

April 12, 1993

Mr. Walter M. Lipp  
Sheridan County State's Attorney  
PO Box 456  
McClusky, ND 58463

Dear Mr. Lipp:

Thank you for your March 8, 1993, letter asking whether Sheridan County has the power to guarantee a loan made by the local rural electric cooperative (REC) to the Sheridan County Development Corporation, a non-profit development corporation ("Development Corporation").

You state in your letter that the Development Corporation, with the assistance of an EDA grant and a loan from the REC, plans to construct a building to be leased to Kirschmann Manufacturing Company ("Company"). The provisions of the EDA grant provide that if the building is sold for any reason, including foreclosure, the grant must be returned in full and, therefore, the EDA will have a first lien against the building. To secure its loan, the REC is requesting that repayment of its loan be guaranteed by Sheridan County, in the amount of \$100,000, through the Development Corporation.

You also state that Sheridan County is not levying a tax for the support of a job development authority or an industrial development organization as authorized under N.D.C.C. ?? 11-11.1-04 and 11-11.1-06 and N.D.C.C. ? 57-15-06.7(29). These sections provide that a county may levy a tax not exceeding 4 mills for a job development authority or a contract with an industrial development organization. You state that Sheridan County does not want to levy this tax unless

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and until the Company is in default of its loan from the REC and the guaranty is being enforced by the REC.

It is my opinion that Sheridan County does not have the power to guarantee the REC loan to the Development Corporation.

Article X, Section 18, of the North Dakota Constitution 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.

N.D. Const. art. X, ? 18. The North Dakota Supreme Court has stated that this provision of the North Dakota Constitution

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. 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, 237-238 (N.D. 1964). This statement is equally applicable to a county.

Although under Article X, Section 18, of the North Dakota Constitution a political subdivision may engage in making loans or donations as part of an industry, enterprise, or business, it must have specific statutory authority to make loans or donations or the

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statute must contain language from which the authority can be necessarily implied. Letter from Attorney General Nicholas J. Spaeth to Mayor Eugene Belisle (April 7, 1992); Letter from Attorney General Nicholas J. Spaeth to State's Attorney Charles R. Isakson (September 29, 1992).

Thus, if there is statutory authority for a county to engage in economic development activities, such as a job development authority under N.D.C.C. ch. 11-11.1, then the county is engaging in an enterprise and is in compliance with the Article X, Section 18 of the North Dakota Constitution. 1992 N.D. Op. Att'y Gen. 57. However, while engaging in that enterprise, the county must act in accordance with its specific statutory authority or a statute from which the authority can be necessarily implied.

A county has no general authority to loan money, make grants or guarantee loans for economic development. However, N.D.C.C. ch. 11-11.1 authorizes those counties which comply with its provisions to engage in economic development projects under specified circumstances.

Under the circumstances you describe in your letter, it appears Sheridan County has not availed itself of the authority granted by N.D.C.C. ch. 11-11.1. If Sheridan County created a job development authority or contracted with an industrial development organization in accordance with chapter 11-11.1, and acquired funds for disposition under N.D.C.C. ? 11-11.1-03, then the county could make loans or grants under subsection 10 of that section to carry out its authority under the chapter. This activity would be permitted under North Dakota Constitution Article X, Section 18, as an engagement in an enterprise for a public purpose. However, even if the county undertook to form a job development authority or contracted with an industrial development organization the chapter does not expressly or implicitly authorize a county to act as a guarantor of a loan to a development corporation.

Therefore, it is my opinion that Sheridan County may not use any of the authority contained in N.D.C.C. ch. 11-11.1 unless it performs the predicate acts to comply with that chapter and avail itself of that authority. It is my further opinion that even if the county fulfilled the requirements of N.D.C.C. ch. 11-11.1 to create a job development authority or contract with a development corporation, the county would not

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be authorized to act as a guarantor on a loan to another entity because acting as a guarantor is not one of the express or implied authorities granted to the county by that chapter.

Sincerely,

Heidi Heitkamp  
ATTORNEY GENERAL

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