

LETTER OPINION
94-L-300

November 3, 1994

Honorable Rick Berg
State Representative
P.O. Box 3024
Fargo, ND 58108-3024

Dear Representative Berg:

Thank you for your letter asking for my opinion on whether a taxing district may contractually agree to distribute payments in lieu of taxes received under N.D.C.C. ? 40-57.1-03, as amended by House Bill No. 1520 of the special session of the Fifty-third Legislative Assembly, in a manner other than on the basis on which the general real estate tax levy is apportioned and distributed.

For the following reason, it is my opinion that a taxing district may not contractually agree to distribute payments in lieu of taxes received under N.D.C.C. ? 40-57.1-03, as amended by House Bill No. 1520 of the special session of the Fifty-third Legislative Assembly, in a manner other than on the basis on which the general real estate tax levy is apportioned and distributed.

N.D.C.C. ch. 40-57.1 authorizes tax exemptions for new and expanding businesses. House Bill No. 1520 of the special session of the Fifty-third Legislative Assembly amended N.D.C.C. ? 40-57.1-03 to provide, in part, that "in lieu of, a property tax exemption granted under this section, a municipality may establish an amount due as payments in lieu of ad valorem taxes on buildings, structures, fixtures, and improvements used in the operation of a project upon which initial construction is begun after June 30, 1994." The amount of the payments in lieu of taxes is certified to the county treasurer for collection. N.D.C.C. ? 40-57.1-03, as amended by House Bill No. 1520, requires that "[u]pon receipt by the county treasurer of the amount of payments in lieu of taxes

Honorable Rick Berg
November 3, 1994
Page 2

under this section, the county treasurer shall apportion and distribute that amount to taxing districts on the basis on which the general real estate tax levy is apportioned and distributed."

Political subdivisions, including school boards, counties and cities, have only such powers as are expressly or impliedly granted by statute. Hodek v. Greater Nelson County Consortium, 520 N.W.2d 825, 828 (N.D. 1994); County of Stutsman v. State Historical Soc., 371 N.W.2d 321, 329 (N.D. 1985); Parker Hotel Company v. City of Grand Forks, 177 N.W.2d 764, 769 (N.D. 1970).

The Legislative Assembly did not authorize a taxing district to agree to the distribution of in lieu payments made under N.D.C.C. § 40-57.1-03, as amended by House Bill No. 1520, in a manner not required by the statute. The statute is not ambiguous. The in lieu payments must be apportioned and distributed on the basis on which the general real estate tax levy is apportioned and distributed.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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