

LETTER OPINION
94-L-49

March 7, 1994

Mr. Warren L. Jamison
Manager
Garrison Diversion Conservancy District
P.O. Box 140
Carrington, ND 58421-0140

Dear Mr. Jamison:

Thank you for the Garrison Diversion Conservancy District's request for an opinion regarding the authority for its membership in the Greater North Dakota Association (hereafter GNDA). The concern about GNDA membership arose at the time because of recent federal legislation which provides that money spent by the GNDA on lobbying efforts will not be considered tax deductible. Public Law 103-66, § 13222. Therefore, on GNDA's membership invoice, a portion of the membership fee that is used for lobbying activities will not be deductible. Memorandum from GNDA President Dale O. Anderson to GNDA Members, December 7, 1993. However, your question specifically asks whether the Garrison Diversion Conservancy District (hereafter District) may be a member of the GNDA.

The District is a governmental agency with the authority to exercise all statutory powers specified in North Dakota Century Code (N.D.C.C.) ch. 61-24, as well as powers which may be reasonably implied. N.D.C.C. § 61-24-02. Letter from Attorney General Robert O. Wefald to Murray G. Sagsveen (May 3, 1983).

The general public purposes of the District include more effective development and utilization of the state's water and land resources, the opportunity for greater economic security, and the promotion of the prosperity and general welfare of all people of North Dakota. N.D.C.C. § 61-24-01.

The District's powers and duties include the power to accept funds, services, or assistance from federal, state, public, or private sources for the purpose of

Mr. Warren L. Jamison
March 7, 1994
Page 2

aiding and promoting the construction, maintenance, and operation of the Garrison Diversion Unit or any part of it. N.D.C.C. ? 61-24-08. The District also has the power to cooperate and contract with other governmental entities in activities promoting the Garrison Diversion Unit. Id.

GNDA lists its strategic goals in its "1994 Program of Action." Included among its strategic goals are promoting state and federal public policy issues which will ensure a healthy business climate and economic opportunities in North Dakota, and programming for the promotion and positive image building for the state. GNDA also lists itself as the "voice of business," id., and on its letterhead as "North Dakota's State Chamber of Commerce."

Generally, public officials have only such authority as the constitution and statutes expressly give them, together with those powers and duties that are necessarily implied from those express grants of authority. American Federation of State, County, and Mun. Employees, Council No. 95 v. Olson, 338 N.W.2d 97 (N.D. 1983). See Letter from Attorney General Nicholas J. Spaeth to State Representative Diane Larson (July 7, 1989).

The District does not have the explicit statutory authority to join a private organization such as GNDA.

See N.D.C.C. ? 61-24-08; cf. Letter from Attorney General Nicholas J. Spaeth to Burleigh County State's Attorney Patricia L. Burke (May 20, 1991) (counties are authorized by statute to join private North Dakota Association of Counties and are not prevented by North Dakota Constitution Article X, Section 18 from making otherwise lawful contributions to that organization).

Similar explicit authority to join membership organizations exists in N.D.C.C. ?? 40-01-23 and 15-29-08(19) and (20).

The question then becomes whether the authority of the District to join and pay any membership fees to GNDA is reasonably or necessarily implied from the express

Mr. Warren L. Jamison
March 7, 1994
Page 3

powers of the District under N.D.C.C. ch. 61-24.

The District does have the statutory authority to promote the construction, maintenance, and operation of the Garrison Diversion Unit. Thus, the District may contract with a private association to disseminate information or promote the Garrison Diversion Unit. See 1981 N.D. Op. Att'y Gen. 176. However, a fair reading of N.D.C.C. ch. 61-24 together with the stated goals of the GNDA does not necessarily support the contention that membership in GNDA is a reasonably or necessarily implied power of the District.

GNDA is a non-governmental entity which promotes itself as the voice of business and the state chamber of commerce. Presumably, its membership is primarily comprised of private businesses. While it does indicate, inter alia, in its 1994 Program of Action, Strategic Goal #2 that it will "maintain a full-time presence in the following Legislative Interim Committee meetings: . . . Garrison Diversion . . .", that is only one of a large number of activities the GNDA proposes to undertake, most of which have little or nothing to do with promotion of the Garrison Diversion Unit. In other words, the promotion of the Garrison Diversion Unit appears incidental to the main purpose of GNDA which is to promote healthy business conditions and economic opportunities for business. Whether the GNDA actually promotes the construction, maintenance, or operation of the Garrison Diversion Unit is a question of fact for the District, not this office, to determine.

Consequently, it is my opinion that the District does not have the express or implied authority under N.D.C.C. ch. 61-24 to join the GNDA and pay membership fees except to the extent that the District determines the GNDA promotes the construction, maintenance, or operation of the Garrison Diversion Unit.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

jjf/pg