

ATTORNEY GENERAL'S OPINION 2000-F-04

Date issued: January 12, 2000

Requested by: Kent Reiersen, Williston City Attorney

- QUESTION PRESENTED -

Whether a home rule city may use sales tax revenue to fund construction of a school to be owned, maintained and primarily used by a school district under a joint powers agreement between the city and the school district.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that a home rule city may use sales tax revenue to fund construction of a school to be owned, maintained and primarily used by a school district under a joint powers agreement between the city and the school district.

- ANALYSIS -

The city of Williston has a limited home rule charter allowing a one cent sales tax. The city passed a sales tax ordinance dedicating the use of the revenue for economic development, infrastructure repairs and retiring prior bond debt.

I have previously advised that "[a] home rule city and its citizens can assume broad control over their finances and fiscal affairs, including the power to levy city sales taxes. See N.D.C.C. § 40-05.1-06(2) and (16). These powers must be authorized by a home rule charter and implemented through city ordinances. N.D.C.C. § 40-05.1-06; Litten v. City of Fargo, 294 N.W.2d 628, 632 (N.D. 1980); Letter from Attorney General Robert Wefald to Jay Fiedler (March 7, 1984)." See 1995 N.D. Op. Att'y Gen. L-115 (concluding that a city can use sales tax revenue to assist a park district in constructing and managing certain recreational facilities under a joint powers agreement).

N.D.C.C. § 54-40.3-01(1) authorizes a joint powers agreement between the city and the school district to use city sales taxes to build a school. The agreement may provide for the duration of the agreement and specify how the agreement is to be partially or completely terminated. N.D.C.C. § 54-40.3-01(1)(b). The law provides for flexibility in providing financing for a cooperative or joint undertaking. N.D.C.C. § 54-40.3-01(1)(d). The agreement may also specify the manner of acquiring, holding or disposing of real and personal property used in the cooperative undertaking. N.D.C.C. § 54-

<PAGE NAME="p.19">40.3-01(1)(e). Home rule cities have the power to enact ordinances for the public welfare. N.D.C.C. § 40-05.1-06(7). Furthermore, home rule cities have the power to contract with any other governmental entity "with respect to any local, state, or federal program, project, or works." N.D.C.C. § 40-05.1-06(15)(emphasis added). See also Letter from Nicholas J. Spaeth to Eugene Belisle (April 7, 1992) (concluding there is no constitutional impediment prohibiting a loan or grant from a city to a school district under Article X, Section 18 of the North Dakota Constitution which prohibits a political subdivision from loaning or giving its credit or making donations "in aid of any individual, association or corporation"); Letter from Nicholas J. Spaeth to Jay Brovold (September 16, 1986) (approving the acquisition of real estate by Billings County to be transferred to the Southwest District Health Unit).

This office has approved joint powers agreements between cities, school districts and the state for the joint use of recreational facilities. See Letter from Attorney General Heidi Heitkamp to H. Patrick Seaworth (October 4, 1995) (approving an agreement between NDSU and Fargo regarding a baseball stadium); Letter from Attorney General Heidi Heitkamp to H. Patrick Seaworth (June 3, 1994) (approving an agreement between NDSU and Fargo regarding the Ellig Sports Complex); Letter from Attorney General Heidi Heitkamp to H. Patrick Seaworth (April 29, 1994) (approving an agreement between the Board of Higher Education, the Bismarck School District, and the Bismarck Park District regarding the Bismarck Community Bowl).

In my opinion, a home rule city may use sales tax revenue to fund construction of a school to be owned, maintained and primarily used by a school district under an appropriate joint powers agreement between the city and the school district as long as the city charter and implementing ordinances authorize the use of sales taxes for such purpose.¹

Corollary questions have been raised regarding whether an amendment to the city of Williston home rule charter to increase the sales tax must be submitted to a vote; whether there is a limit on an increase of sales tax; and whether there is a limitation on the length of time for which a sales tax can be dedicated to paying a bond issue used to build a school.

The imposition of a higher sales tax than originally authorized under a home rule charter requires amendment of the home rule charter, which

¹ State law requires approval of the state superintendent of public instruction for school construction costing in excess of \$25,000. N.D.C.C. § 15-35-01.1.

requires a vote. See N.D.C.C. § 40-05.1-07. If a home rule city has <PAGE NAME="p.20">complied with N.D.C.C. § 40-05.1-06(2) and (16) regarding the power to enact a city sales tax, there is no limit to the amount of the sales tax which may be enacted for a legally authorized purpose. 1996 N.D. Op. Att'y Gen L-142-143. Likewise, if a home rule city has complied with N.D.C.C. § 40-05.1-06(2) and (16), there is no limitation regarding the time a sales tax may be dedicated to paying a bond issue.² If a home rule charter authorizes the imposition of a sales tax without limit and for any designated purpose, then increases in sales tax may be provided by ordinance adopted by the governing body to implement the home rule charter provision for sales taxes. N.D.C.C. § 40-05.1-06(2) and (16). 1995 N.D. Op. Att'y Gen. L-115.

- EFFECT -

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented decided by the courts.

Heidi Heitkamp
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² However, there may be concerns regarding North Dakota constitutional debt limitations. See, e.g., Haugland v. City of Bismarck, 429 N.W.2d 449 (N.D. 1988).