

LETTER OPINION
2000-L-153

October 17, 2000

Mr. Lonnie W. Olson
Ramsey County State's Attorney
524 4th Avenue #16
Devils Lake, ND 58301-2490

Dear Mr. Olson:

Thank you for your letter asking whether the Ramsey County Commission may donate money to the Devils Lake Improvement Association, a private, non-profit organization. You state in your letter:

The organization plans to purchase 200 acres of land in Nelson County for the purpose of a flood control outlet from Stump Lake to the Tolna Coulee. The property to be purchased is on the high spot in the Tolna Coulee at an elevation of 1459. Their intent is to remove the two feet of black dirt which has accumulated since statehood according to the analysis done by the North Dakota State Geologist. Their further stated intent is to ensure that the property is not used to construct a dam to further hold flood waters in the Devils Lake Basin past what the natural outlet elevation would be.

Article X, Section 18 of the North Dakota Constitution provides:

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. . . .

N.D. Const. art. X, § 18.

[T]he limitations of Article X, Section 18 of the North Dakota Constitution do not apply in three situations: (1) when the money is used to make internal improvements; (2) when the money is donated for the support of the poor; or (3) when the money is distributed pursuant to an authorized industry, enterprise, or business. . . .

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1998 N.D. Op. Att'y Gen. 151, 152-53 (Dec. 17 to Ben Tollefson).
Article VII, Section 2 of the North Dakota Constitution provides:

The legislative assembly shall provide by law for the establishment and the government of all political subdivisions. Each political subdivision shall have and exercise such powers as provided by law.

Thus, any authority for a county to use money to make internal improvements, to make donations for the support of the poor, or to distribute money pursuant to an authorized industry, enterprise, or business, must be derived from state law passed by the North Dakota Legislature. See Letter from Attorney General Nicholas Spaeth to Charles Isakson (Sept. 29, 1992) (a political subdivision may not make a donation to a private local hospital without specific statutory authority or a statute from which that authority can be necessarily implied).

I am not aware of any state law that would authorize a county commission to donate money to the Devils Lake Improvement Association. One might suggest that N.D.C.C. § 61-02-24.1 would authorize a county commission to donate money to the Devils Lake Improvement Association. That state law provides:

All political subdivisions, including counties, townships, cities, park districts, and water resource districts may separately or jointly with other political subdivisions, the state of North Dakota through the [state water] commission or federal departments or agencies, investigate, plan, and do all things necessary for participating in or undertaking underground or surface water surveys, development, construction, reconstruction, and maintenance of works, dams, and projects for the beneficial utilization and control of water resources, and may enter into contracts with the [state water] commission to pay rents, charges, or other payments for the use of works of the [state water] commission.

N.D.C.C. § 61-02-24.1. This state law authorizes a county commission to participate in or undertake, separately or with other public entities, underground or surface water development or construction. It is my opinion, however, that this law does not authorize the county commission to give money to a private, non-profit organization who intends to undertake surface water development or construction. Thus, it is my opinion that the Ramsey County Commission may not donate money to the Devils Lake Improvement Association.

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Sincerely,

Heidi Heitkamp
Attorney General

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