

N.D.A.G. Letter to Wold (April 16, 1990)

April 16, 1990

Mr. James Wold
Griggs County State's Attorney
P.O. Box 541
Cooperstown, ND 58425

Dear Mr. Wold:

Thank you for your February 13, 1990, letter requesting my opinion on various issues concerning the funding of a nonprofit hospital organization.

Your first question is whether a hospital district could be established under N.D.C.C. ch. 23-30 if the primary purpose is to channel tax revenues to an established nonprofit association which includes a hospital, a nursing home, and a clinic. In an earlier letter opinion this office concluded that ch. 23-30 authorized a contract between a district and an existing hospital for providing hospital services. However, the opinion concluded that the "contract must be a substantive contract and not merely a conduit for funneling public (tax) moneys into a private institution." Letter to Mr. Robert W. Kinsey dated May 12, 1978, at 2. I am enclosing a copy of that opinion for your review.

I believe the reasoning behind the 1972 letter opinion to Mr. Kinsey is equally applicable in 1990. Therefore, it is my opinion that a hospital district cannot be organized solely for the purpose of channeling tax revenues to an existing nonprofit association. It may be possible to develop a legal contract between the hospital and the hospital district whereby control over the operation of the hospital and services to be offered by the board of directors of the hospital district, could legitimize the "pass-through" of money to an existing nonprofit organization. However, a determination by this office of a particular factual setting would be beyond the scope of my authority.

The second and third issues you raise concern the ability to apply tax revenues raised under N.D.C.C. chs. 23-18 and 23-18.1 to operating expenses and loan indebtedness for an existing clinic and hospital. This office has had several opportunities to address this issue previously.

I am enclosing copies of two letter opinions provided to F.C. Rohrich, Emmons County State's Attorney, on August 20, 1984 and September 30, 1985. In each of those opinions it was the opinion of this office that the fund authorized by N.D.C.C. ch. 23-18 was "in the nature of a sinking fund and therefore available only for the retirement of a debt." Letter opinion to F.C. Rohrich August 20, 1984, at 1. In addition, this office opined that moneys raised by the mill levy could not be used for subsequent maintenance or repair costs. Letter opinion to F.C. Rohrich, September 30, 1985, at 1.

It is my opinion that each of these letters correctly state the law with regard to the use of tax revenues raised pursuant to N.D.C.C. chs. 23-18 and 23-18.1. Moneys raised under either of those chapters are to "be used exclusively for the construction and equipment" of a hospital or clinic. N.D.C.C. § 23-18-04.

I trust that this answers your questions. If you have other questions please contact me again.

Sincerely,

Nicholas J. Spaeth

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