

N.D.A.G. Letter to Fraase (June 2, 1988)

June 2, 1988

Mr. Paul H. Fraase
Acting City Attorney
P.O. Box 5503
Bismarck, ND 58502

Dear Paul:

Thank you for your letter dated May 2, 1988, concerning the plan which the city of Bismarck has adopted to provide for the financing of improvements to its civic center and public library.

Judge William Hodny of the South Central Judicial District has issued a decision in which he has held that the plan constitutes a legal method for financing these improvements. However, you have indicated that the plaintiffs in that action are planning to appeal from that judgment to the North Dakota Supreme Court.

You have asked me what options are available to the city to finance these improvements if Judge Hodny's decision is reversed by the Supreme Court and whether the city is in violation of any state law by proceeding to request bids for these improvements while this matter is on appeal.

With respect to your first question, my initial response is that available financing options would normally be a function of the marketplace in that they would be arrived at by the city in consultation with its financial advisers, and the legality of these options would be passed upon by the city's attorney. It would be more appropriate, at that point, if there is a question with regard to a particular plan which has been articulated, to consult my office.

In the absence of any specific financing plan, I can advise you that alternative financing methods available to the city would include either paying cash for these improvements or financing them through the issuance of general obligation bonds of the city under N.D.C.C. ch. 21-03. In addition, N.D.C.C. ch. 40-38 authorizes the city to establish a library building fund to be used to construct, enlarge, alter, or purchase a public library. The foregoing appear to me to be the only available options. This is not to say, however, that there are no other financing methods available to the city. As pointed out by Judge Hodny in his decision, the lease/purchase method of financing which the city adopted to fund these improvements is not set out directly in the statutes under the powers and authorities given to municipalities, but has been structured under the authority of various statutory powers given generally to municipalities under N.D.C.C. chs. 40-05 and 40-11. In other words, it is not outside the realm of possibility that there are other financing methods available to the city which could be structured under the various powers given to municipalities under the laws of this state. As indicated above, this is a matter for the city

to discuss with its financial consultants.

With respect to your second question, I am not aware of any state law which would prohibit the city from requesting bids in connection with these improvements. However, I would caution that any contracts which the city might enter into should either be delayed until the Supreme Court has acted or conditioned upon that court issuing a decision favorable to the city.

I hope that this information is responsive to your questions. If not, or if you have additional questions, please do not hesitate to contact me.

Sincerely,

Nicholas J. Spaeth

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