

N.D.A.G. Letter to Eppler (July 27, 1989)

July 27, 1989

Mr. Don B. Eppler
City Attorney
Lisbon, ND 58054

RE: Armory Lease

Dear Mr. Eppler:

Thank you for your June 30, 1989, letter to Patricia Moen asking whether a school district may purchase an armory either outright or by contract for deed if the armory is subject to a long-term (longer than one year) lease agreement between a city and the National Guard.

N.D.C.C. § 15-29-08(5) gives the school districts the power to lease facilities "for a period not to exceed one year." This section, which contains an exception for vocational education facilities, prohibits a school district from leasing Property for longer than one year.

The one year restriction in N.D.C.C. § 15-29-08(5) would prevent a purchase by a school district of property burdened by a lease that is longer than one year. This office has previously stated the rationale for this section as follows:

The philosophy of this section appears to be that as conditions change and membership on the school board changes each year, the desirability of leasing a school building may also change. The Legislature apparently did not want a school district, which no longer believed it necessary to lease a school building, to be bound by some lease which had been executed some years before.

Letter from Assistant Attorney General Gerald W. Vande Walle to Stark County State's Attorney Bruce R. Howe (Aug. 25, 1970). The same logic applies to a purchase of property that a school district knows is subject to a long-term lease. That restriction would also apply to a contract for deed arrangement wherein the school district takes the equitable title. The only difference would be that the school district would not take the legal title until the end of the term of the contract.

You state that the reason for a title transfer, by deed or contract for deed, is to allow the school district to make improvements to the property. You are probably referring to N.D.C.C. § 15-29-08(7), which limits improvements by a school district to lots or sites "owned by the district." However, it would seem feasible to utilize the authority in N.D.C.C. ch. 54-40 on joint exercise of governmental powers to accomplish the improvements.

N.D.C.C. § 54-40-08(1) provides that a city and a school district can enter into an agreement with one another for joint or cooperative action, on a cost-sharing basis, or otherwise, to carry out any function or duty which may be authorized by law or assigned to one or more of them, and to expend funds . . . pursuant to such agreement . . . to enter into lease-option to buy and contract for deed agreements between themselves . . . and to otherwise share or contribute property in accordance with such agreement.

This provision would authorize an agreement to make the improvements with the city contracting for the improvements under its authority and recovering its costs via the yearly lease payments from the school district.

The school district could legally consider a yearly lease with an option to buy after the long-term lease with the National Guard terminates (at the earliest, one year prior to the end of the lease). The lease could probably guarantee the school district the option to renew each year for each successive year, although this would require an ordinance by the city under N.D.C.C. § 48-08-07. After the National Guard's long-term lease expires, the school district can exercise its option to purchase the property at an agreed upon price. The school district would then have title to the property and would have had the use of the property, with improvements, in the interim.

There are public bid requirements for cities to consider for real property transfers. See N.D.C.C. § 40-11-04, 40-11-04.1. N.D.C.C. § 54-40-08 can be construed to authorize the sale by a city to the school district without a public sale. See Dahl v. City of Grafton, 286 N.W.2d 774 (N.D. 1980). Another possibility is to seek legislation authorizing the transfer and exempting the transfer from the various legal problems mentioned previously. State agencies have done this on occasion.

I hope this answers your inquiry.

Sincerely,

Nicholas J. Spaeth

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