

**LETTER OPINION  
2009-L-05**

February 23, 2009

Ms. Elizabeth L. Pendlay  
Crosby City Attorney  
PO Box 289  
Crosby, ND 58730-0289

Dear Ms. Pendlay:

Thank you for your letter requesting my opinion on whether a city housing authority may act as a limited partner in a limited partnership operating a low income housing project. Based on the following, it is my opinion that a city housing authority may act as a limited partner in a limited partnership which operates a low income housing project in the city.

**ANALYSIS**

In your letter you indicate that the Crosby Housing Authority was recently assigned limited partnership interests in a limited partnership which operates a low income housing project in the city of Crosby. A family trust is both the general partner for the limited partnership as well as a limited partner. You further indicate that the housing project was financed by a loan from the United States Department of Agriculture, Rural Development Office ("RD") and that RD is questioning the authority of the city housing authority to act as a limited partner.

First, I will address whether partnership laws allow a governmental entity to become a limited partner. North Dakota has enacted a version of the 2001 Uniform Limited Partnership Act ("ULPA" or "LPA").<sup>1</sup> Under the LPA, a limited partnership "means a partnership that is formed by two or more persons and which has one or more general partners and one or more limited partners" which is either formed under N.D.C.C. ch. 45-10.2 or elects to become subject to the chapter.<sup>2</sup> A limited partner with respect to a limited partnership means a person that becomes a limited partner under N.D.C.C. § 45-10.2-31.<sup>3</sup> That statute provides that a person becomes a limited partner either as

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<sup>1</sup> See N.D.C.C. ch. 45-10.2.

<sup>2</sup> N.D.C.C. § 45-10.2-02(26).

<sup>3</sup> N.D.C.C. § 45-10.2-02(25).

provided in a partnership agreement or with the consent of all partners.<sup>4</sup> You indicated that the assignments of the limited partnerships to the city housing authority were accomplished in 2007 in accordance with the terms of the agreement and that consent was given by all the existing limited and general partners.

The above definitions in the LPA refer to “a person.” The term “person” is not defined in N.D.C.C. ch. 45-10.2. There is, however, a general default definition of “person” contained in N.D.C.C. § 1-01-49(8) which includes “an individual, organization, government, political subdivision, or government agency or instrumentality.” Thus, a government, political subdivision, or government agency or instrumentality may, under the law, as a “person” become a limited partner in a limited partnership.<sup>5</sup>

A local housing authority has been variously described in statute and elsewhere as a “public body corporate and politic,”<sup>6</sup> a “public corporation for public purposes,”<sup>7</sup> and as a governmental entity or public body.<sup>8</sup> Consequently, it is my opinion that a city housing authority, as a public body, government entity, or political subdivision, is a “person” and thus is eligible under the state’s enactment of LPA to be a limited partner in a limited partnership.

Next, I will address whether a housing authority has statutory authorization to become a limited partner in partnership with private parties. A housing authority has broad authority to make and execute contracts and other instruments; prepare, carry out, acquire, lease, and operate housing projects; provide for construction, reconstruction, improvement, alteration, and repair of housing projects; own, hold, and improve property; purchase, lease, obtain options on, or acquire by gift, grant, bequest, devise, or otherwise any property or interest in property; and do any and all things necessary or desirable to secure the financial aid or cooperation of the federal government in undertaking, constructing, maintaining, or operating any housing project.<sup>9</sup> It is my further opinion that these powers granted to housing authorities, as well as the provisions of the LPA noted above, implicitly permit a housing authority to become a limited partner in a limited partnership if that furthers the public purpose of a housing authority.

Finally, even though a city housing authority may qualify as a limited partner in a limited partnership under N.D.C.C. ch. 45-10.2, the question has been raised by RD whether

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<sup>4</sup> See N.D.C.C. § 45-10.2-31.

<sup>5</sup> See N.D.C.C. §§ 45-10.2-02(25), (26), (31), and 45-10.2-31.

<sup>6</sup> N.D.C.C. § 23-11-02.

<sup>7</sup> *Ferch v. Hous. Auth.*, 59 N.W.2d 849, 865 (N.D. 1953).

<sup>8</sup> N.D.A.G. 93-L-190; see also N.D.A.G. 98-L-122 (describing a county housing authority as a political subdivision).

<sup>9</sup> See N.D.C.C. § 23-11-11(4), (6), (7), (11), (12), (31).

N.D.C.C. § 23-11-12 would prevent a city housing authority from acting as a limited partner in a limited partnership. The second sentence of that statute provides that “[n]o housing authority may construct or operate any project for profit or as a source of revenue to the city or the county.”<sup>10</sup> While the statutory prohibition would prevent a housing authority from constructing or operating a project for profit, that prohibition does not prevent the operation of other provisions in N.D.C.C. ch. 23-11

In order to properly analyze whether the prohibition in N.D.C.C. § 23-11-12 applies to a local housing authority acting as a limited partner, it is necessary to review the role of a limited partner in a limited partnership. A limited partner does not have the right or power as a limited partner to act for or bind the limited partnership.<sup>11</sup> An obligation of a limited partnership is not the obligation of a limited partner, and a limited partner is not personally liable, directly or indirectly, for an obligation of a limited partnership.<sup>12</sup> A limited partner does not have any fiduciary duty to the limited partnership or any other partner solely by reason of being a limited partner.<sup>13</sup> A limited partner, in fact, is more of a passive investor than an active participant in the limited partnership entity.<sup>14</sup> The common meaning<sup>15</sup> of the word “operate” as used in the second sentence of N.D.C.C. § 23-11-12 includes “[t]o run or control the functioning of . . . [t]o conduct the affairs of; manage.”<sup>16</sup> “Under the Uniform Limited Partnership Act of 2001, a limited partner . . . has no right to participate in the management and operation of the business, or to interfere in any manner with its conduct or control.”<sup>17</sup> Thus, a limited partner cannot reasonably be said to manage or “operate” a partnership project. Those activities of control fall to the general partners.<sup>18</sup>

In your letter, you indicate that the city housing authority did not have any formal role with the limited partnership until years after the project was constructed, so it obviously had no

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<sup>10</sup> N.D.C.C. § 23-11-12 (emphasis added).

<sup>11</sup> N.D.C.C. § 45-10.2-32.

<sup>12</sup> N.D.C.C. § 45-10.2-33.

<sup>13</sup> N.D.C.C. § 45-10.2-35(1).

<sup>14</sup> See 59A Am. Jur. 2d Partnership §§ 863-64 (2d ed. 2003) (“A limited partner has no interest in, or perhaps more correctly no title to, the assets of the partnership. His or her interest is personal property, even if the partnership assets include or consist solely of land, and even if land is the only thing in which it deals. The Uniform Limited Partnership Act of 2001 provides that the only interest of a partner which is transferable is the partner’s transferable interest, and a transferable interest is personal property.”).

<sup>15</sup> See N.D.C.C. § 1-02-02 (words to be understood in their ordinary sense unless defined in law).

<sup>16</sup> The American Heritage Dictionary 871 (2d coll. ed. 1991).

<sup>17</sup> 59 A Am. Jur. 2d Partnership § 864 (2d ed. 2003).

<sup>18</sup> See generally N.D.C.C. §§ 45-10.2-40, 45-10.2-41, 45-10.2-42(1), and 45-10.2-44(2), (3), (4).

formal part in constructing the project. Further, as described above, a limited partner has no management or operation authority over limited partnership activities. Consequently, that portion of N.D.C.C. § 23-11-12 is not applicable. You also indicate that any profits received by the housing authority in its capacity as a limited partner do not inure to the benefit of the city or county but, in fact, would be used to advance the housing projects of the authority.

Consequently, based on the facts and circumstances as outlined in your opinion request, it is my further opinion that the city housing authority does not violate the restriction contained in N.D.C.C. § 23-11-12 by acting as a limited partner in a limited partnership in that it did not construct or operate any housing project for profit or otherwise.

Sincerely,

Wayne Stenehjem  
Attorney General

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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 is decided by the courts.<sup>19</sup>

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<sup>19</sup> See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).