

May 12, 1978

Mr. Robert W. Kinsey
State's Attorney
Divide County
Crosby, North Dakota 58730

Dear Mr. Kinsey:

This is in reply to your letter of May 5, 1978, relative to the authority of a hospital district. You state the following facts and questions:

The St. Luke's Hospital in Crosby, North Dakota is presently operated by an order of Catholic nuns with its headquarters in Richardton, North Dakota.

The hospital is interested in determining whether or not it may initiate a hospital district pursuant to Chapter 23-30 of the North Dakota Century Code. Specifically, the hospital wants to know if the hospital district may contract with the Catholic order to provide hospital facilities so that the Catholic order may operate the hospital either on behalf of the district or on behalf of the membership of the hospital district.

I would appreciate receiving your opinion on this matter and any suggestions which you may have to implement the goal of having the hospital operated by the order.

Assuming a hospital district is organized pursuant to Chapter 23-30 of the NDCC, it would appear Section 23-30-10 of the NDCC would govern your question. This sections provides:

HOSPITAL DISTRICT MAY ENTER INTO CONTRACT. Any hospital district may enter into a contract with a hospital or with another district to consolidate or cooperate for mutual purposes, including but not limited to ambulance or emergency vehicle services, or may enter into a contract with any federal, state, or local government agency for hospital or doctor services, upon terms suitable to all concerned, and power to make such contracts is hereby conferred upon such state or local government agency in addition to such powers as have been heretofore provided by law. (emphasis ours)

The above quoted language would appear to permit the board of directors of a hospital district to enter into a contract with an existing hospital to provide hospital facilities to the district. The fact the hospital is operated by a Catholic order does not appear to be of particular significance.

Chapter 23-30 of the NDCC was enacted in 1975 and we have had no experience relative thereto, i.e., we have not been involved in the formation of any districts nor do we have any knowledge as to whether any districts have been formed under this legislation. While, as noted above, we believe the statute does authorize a contract between the district and the existing hospital to provide hospital services, we also believe that contract must be a substantive contract and not merely a conduit for funneling public (tax) moneys into a private institution. Thus, we would assume the contract would contain provisions which would give the board of directors some degree of control over the operation of the hospital, the services to be offered, etc. Whether these provisions would be agreeable to the Catholic Order presently operating the hospital is, of course, not know to us.

We have no particular expertise to offer in the drafting of the terms of such contract, particularly since we are not aware of the wishes and desires of the various parties who might be involved in such a venture. We trust, however, that the above discussion will adequately set forth our position on the question presented.

Sincerely,

Gerald W. VandeWalle
Chief Deputy Attorney General