

LETTER OPINION
2000-L-46

March 31, 2000

Mr. Richard J. Riha
Burleigh County State's Attorney
514 East Thayer Avenue
Bismarck, ND 58501-4413

Dear Mr. Riha:

Thank you for your letter asking whether a joint powers agreement may be used to authorize a county to loan money to an organized township to pay for road construction after the township has already entered into a road construction contract and incurred the debt for the construction work which has been completed. You also ask whether a joint powers agreement may be made between a county and an unorganized township to provide a loan to the unorganized township for road purposes.

The matter of employing a joint powers agreement to provide a loan by a county to a township for road construction purposes was recently dealt with in 1999 N.D. Op. Att'y Gen. 66. I concluded that a joint powers agreement between a county and a township could address the repair and maintenance of township roads and could include the use of a loan from one party to another as an authorized element of financing the joint undertaking. Id. However, the scenario you relate in your letter would not constitute entering into a joint powers agreement to jointly administer any power or function authorized by law or assigned to one or more of the political subdivisions involved. N.D.C.C. § 54-40.3-01(1). The process you contemplate would be a pure loan of money by the county to the township.

1999 N.D. Op. Att'y Gen. 66 provided, in part:

Although a county loan to a township does not violate Article X, Section 18 of the North Dakota Constitution, the county and township still must have specific statutory authority to make or receive loans or the statute must contain language from which the authority to make or receive loans may be necessarily implied. 1993 N.D. Op. Att'y Gen. L-129 (April 12 letter to Walter M. Lipp). See also Walstad v. Dawson, 252 N.W. 64, 66-67 (N.D. 1934) (county department only "has such powers as are expressly conferred by statute or are necessarily implied in order to effectuate the purposes for which it was created"). A thorough search of the Century Code has revealed that there is no statute granting specific authority to a county to make a loan to a township for road purposes, and there is no statute from which such authority may be necessarily implied. Likewise, there is no general

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authority for a township to borrow money from a county for these purposes through a loan.

At least one party to a joint powers agreement must possess a given legal authority or power before that power may be exercised through a joint powers agreement. N.D.C.C. § 54-40.3-01; 1994 N.D. Op. Att'y Gen. L-258, L-260 (Oct. 6 letter to Mattson); 1996 N.D. Op. Att'y Gen. L-6, L-7 (Jan. 22 letter to Koppy). As noted above, neither a county nor a township have general authority to make or receive loans. It is therefore my opinion that a joint powers agreement may not be used to provide a loan by a county to a township where the debt has already been incurred by the township.

Your second question asks whether a joint powers agreement could be used to make loans by a county to an unorganized township. In order for an organized (civil) township to exist the procedures of N.D.C.C. ch. 58-02 must be followed. Absent that organization, the territory constitutes a geographical area known as a congressional township. N.D.C.C. § 58-02-01, 1998 N.D. Op. Att'y Gen. 87. "As an unorganized township, there are no township offices in existence." Letter from Attorney General Nicholas J. Spaeth to Steven J. Wild (October 20, 1986). Without civil township organization there are no offices to be filled by persons to represent the county. There is thus no entity able to contract with another entity to exercise any power on behalf of a township. N.D.C.C. §§ 54-40.3-01(1) and 9-01-02(1). Therefore, the answer to your second question is no.¹

Sincerely,

Heidi Heitkamp
Attorney General

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¹ For a discussion on various aspects of county commission authority in unorganized or dissolved townships, see 1998 N.D. Op. Att'y Gen. 87 (copy attached).