LETTER OPINION
2002-L-59

October 18, 2002

Mr. Timothy A. Priebe
City Attorney
PO Box 1097
Dickinson, ND 58602-1097

Dear Mr. Priebe:

Thank you for your letter and attached materials requesting my opinion on whether a city park district may borrow funds from a bank to finance needed projects and equipment, repayable from projected oil revenues.

Cities and other political subdivisions have only those powers necessarily conferred upon them by the Legislature, or those necessarily implied from the powers expressly granted. See Parker Hotel Company v. City of Grand Forks, 177 N.W.2d 764, 768 (N.D. 1970); Murphy v. Swanson, 198 N.W. 116, 119 (N.D. 1924). See also N.D. Const. art. VII, § 2. There is no state law that specifically authorizes a city park district to borrow money from a local bank[1] in anticipation of the receipt of oil revenues.

City park districts have authority to borrow money under certain circumstances. Section 40-49-12(6), N.D.C.C., permits a park district to "[i]ssue negotiable bonds of the park district as provided in title 21." A park district also has authority to "[b]orrow money to defray the expenses of the year, subject to the limitations contained in title 21, in anticipation of taxes already levied, and issue therefor the warrants or other obligations of the district." N.D.C.C. § 40-49-12(9) (emphasis supplied). In addition, under N.D.C.C. § 40-49-24(1), a park district, in anticipation of collecting user fees, may issue evidences of indebtedness for the purpose of "acquiring, constructing, improving, and equipping parks and park and recreational buildings and facilities, and for the purpose of acquiring land for those purposes." Id.

[1] Cf. Haugland v. City of Bismarck, 429 N.W.2d 449, 453 (N.D. 1988) (city's borrowing authority under N.D.C.C. § 40-05-01(2) not limited to issuance of bonds under N.D.C.C. title 21). Park districts lack the same broad borrowing authority cities have under N.D.C.C. § 40-05-01(2).

The negotiable bonds referred to in N.D.C.C. § 40-49-12(6) are general obligation bonds issued under N.D.C.C. ch. 21-03. Park districts have authority to issue general obligation bonds, with an election, to "provide for acquiring, laying out, and improving parks, parkways, boulevards, and pleasure drives, and to acquire land for these purposes, but such indebtedness may not at any time exceed one percent of the value of the taxable property in such park district." N.D.C.C. §§ 21-03-06(6), 21-03-07. Park districts may also (without an election) by "resolution adopted by a two-thirds vote dedicate the tax levy authorized by section 57-15-41 and authorize and issue general obligation bonds to be paid by the dedicated levy for the purpose of providing funds to prepay outstanding special assessments made in accordance with the provisions of title 40 against property owned by the . . . park district . . . ." N.D.C.C. § 21-03-07(10). General obligation bonds may be sold privately, such as to a local bank. N.D.C.C. § 21-03-08.

The authority to borrow money referenced in N.D.C.C. § 40-49-12(9) to defray expenses in anticipation of taxes already levied refers to the certificates of indebtedness that may be issued under N.D.C.C. ch. 21-02. Section 21-02-02, N.D.C.C., allows political subdivisions to borrow against revenues through the issuance of certificates of indebtedness. "Revenues" means any of the following:

a. Uncollected taxes.

b. Amounts to be received from a distribution of federal moneys, including currently existing bureau of Indian affairs contracts.

c. Amounts to be received from a distribution of moneys pursuant to a state appropriation or a state statutory or constitutional provision.

N.D.C.C. § 21-02-01(2). Certificates of indebtedness must be advertised for competitive bids unless sold to a state entity or if the amount of the certificates to be sold does not exceed $100,000. N.D.C.C. § 21-02-11.

Certificates of indebtedness issued under N.D.C.C. ch. 21-02 are used to finance short-term cash flow. The reason generally for such temporary financing is to provide cash flow between the time property taxes are levied and the time the tax revenues are received. Moreover, under state law these temporary borrowings are generally issued in anticipation of levied but uncollected ad valorem taxes, not oil revenues. See N.D.C.C. §§ 40-49-12(9), 21-02-02, and 21-02-01(2). Consequently, it is not possible for a park district to issue certificates of indebtedness under N.D.C.C. ch. 21-02 to be repaid by anticipated oil revenues. Also, as noted above, certificates of indebtedness must be advertised for bids and cannot generally be sold privately to banks unless the amount of the certificate of indebtedness is less than $100,000. See N.D.C.C. § 21-02-11.

Likewise, the use of general obligation bonding under N.D.C.C. ch. 21-03 would not be a feasible solution to the question you raise since even though general obligation bonds may be privately sold, they are to be repaid by a direct annual irrepealable tax levied by the municipality issuing the bonds or by any other moneys authorized by the Legislature. See N.D.C.C. § 21-03-15. Since oil revenues are not an annual tax or other authorized source of repayment, they may not be used to directly repay general obligation bonds. Furthermore, the issuance of such general obligation bonds generally requires an election, and the amount to be borrowed is limited to one percent of the value of the taxable property of the park district. See N.D.C.C. §§ 21-03-06(6) and 21-03-07 (requiring general obligation bonds to be approved by a vote of 60% of all qualified voters of the political subdivision voting on the question).

I have not addressed in this opinion another financing avenue that may be open to a park district, which is borrowing for an emergency purpose under N.D.C.C. § 40-40-18, because there is no indication in your letter or the attached materials that the purpose for the borrowing is for emergency expenditures.

Based on the foregoing, it is my opinion that a park district does not have the authority to borrow funds from a bank for needed projects or equipment when the source of loan repayment is projected oil revenues.

Sincerely,

Wayne Stenehjem
Attorney General

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