

**LETTER OPINION
2002-L-72**

December 24, 2002

Mr. Walter M. Lipp
McClusky City Attorney
PO Box 590
McClusky, ND 58463-0590

Dear Mr. Lipp:

Thank you for your letter asking whether the city of McClusky may make a donation to the McClusky Centennial Association to help support a city centennial celebration. You state that the city of McClusky will celebrate its centennial in the year 2005. You also indicate that in 1995 voters in the city of McClusky adopted a home rule charter for the purpose of collecting a 1% sales tax.

Article X, Section 18 of the North Dakota Constitution provides:

The state, any county or city may make internal improvements and may engage in any industry, enterprise or business, not prohibited by article XX of the constitution, but neither the state nor any political subdivision thereof shall otherwise loan or give its credit or make donations to or in aid of any individual, association or corporation except for reasonable support of the poor, nor subscribe to or become the owner of capital stock in any association or corporation.

The North Dakota Supreme Court has interpreted this constitutional provision as follows:

[Article X, Section 18 of the North Dakota Constitution] does not prohibit the making of loans or giving of credit or making donations in connection with a city's engaging in any industry, enterprise, or business except engaging in liquor traffic. What it does prohibit is for a city "otherwise" to make loans or give its credit or make donations. In other words, making loans or giving credit may be done in connection with the city's engaging in any permissible industry, enterprise, or business, but not otherwise.

Gripentrog v. City of Wahpeton, 126 N.W.2d 230, 237-38 (N.D. 1964) (emphasis added). In order for a city to lawfully make donations pursuant to N.D. Const. art. X, § 18, the city

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must have statutory authority. 2002 N.D. Op. Att'y Gen. F-09, 2000 N.D. Op. Att'y Gen. F-19, 1995 N.D. Op. Att'y Gen. L-233, 1993 N.D. Op. Att'y Gen. L-129, Letter to Charles Isakson (Sept. 29, 1992), Letter to Tom Slorby (Jan. 23, 1989), Letter to Stuart Larson (Sept. 25, 1987), 1964-66 N.D. Op. Att'y Gen. 83.

The Legislature has authorized home rule cities to acquire certain powers if those powers are included in the city's home rule charter approved by a majority of the city electors. See N.D.C.C. §§ 40-05.1-05, 40-05.1-06. One of the powers a home rule city may acquire is authority "[t]o engage in any utility, business, or enterprise permitted by the constitution or not prohibited by statute" N.D.C.C. §40-05.1-06(10). Our office has previously determined that a home rule city with the authority "to engage in any utility, business, or enterprise" in its home rule charter may donate funds to a private entity once it has implemented a properly drafted ordinance allowing such a donation. 1998 N.D. Op. Att'y Gen. F-30. See also 1993 N.D. Op. Att'y Gen. F-06, 1993 N.D. Op. Att'y Gen. F-11.

In this case, McClusky's home rule charter includes only the power to implement a sales and use tax. The charter does not include the authority "[t]o engage in any utility, business, or enterprise permitted by the constitution or not prohibited by statute" N.D.C.C. §40-05.1-06(10). Thus, the city of McClusky does not have the authority to donate funds to the McClusky Centennial Association through an enterprise authorized by its home rule charter and ordinance.

After thoroughly reviewing our state's laws, I find no statute that would authorize a city that does not have home rule authority "to engage in any utility, business, or enterprise," to make a donation for a city centennial celebration. The Legislature had authorized cities to establish local centennial committees to celebrate the state's centennial in 1989, N.D.C.C. § 40-05-21; however, there is no similar statute authorizing cities to establish or fund city centennial celebrations.

Therefore, it is my opinion that the city of McClusky does not have authority to donate funds to the McClusky Centennial Association to help support a city centennial celebration.

Sincerely,

Wayne Stenehjem
Attorney General

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