

**LETTER OPINION
2003-L-31**

June 9, 2003

Mr. Wade G. Enget
Stanley City Attorney
PO Box 369
Stanley, ND 58784-0369

Dear Mr. Enget:

Thank you for asking whether the city of Stanley may donate certain monies to a nonprofit corporation. You indicate that in the year 2000, a church in Stanley disbanded and donated its building and \$40,000 to the city. For purposes of this opinion, I will assume the church put no legal limitations on what the city could do with the building or the money. See generally, N.D.C.C. § 1-08-04. Initially the plan was to convert the building to either a library or youth center, but the conversion was never completed. You also indicate the money was eventually placed in the city's urban renewal fund and part was used to inspect and remove asbestos in the church building. Subsequently, the city conveyed the real property to a local nonprofit corporation to restore the church building.¹ The nonprofit corporation later requested the city to turn over the balance of funds the city previously received from the church. You indicate that the city is hesitant to do so because of N.D.A.G. 2002-F-09.² In that opinion, I concluded that a county without home rule

¹ Whether the city can give (donate) the real property to a local nonprofit corporation raises the same issues raised in determining whether the city can give funds to the local nonprofit corporation.

² It might be argued that the funds the city received from the disbanded church might not be subject to the anti-gift provision of the North Dakota Constitution (N.D. Const. art. X, § 18) because the funds in question are not derived from taxation but are traceable to a donation from a private source. However, the Legislature in N.D.C.C. § 21-04-01(5) has rather broadly classified what funds are "public" by including "all funds derived from taxation, fees, penalties, sale of bonds, or from any other source, which belong to and are the property of a public corporation or of the state, and all sinking funds of such public corporation or of the state, and all funds from whatever source derived and for whatever purpose to be expended of which a public corporation or the state have legal custody." *Id.* (emphasis supplied). Consequently, such an argument would be unpersuasive.

authority may not donate money to a nonprofit organization in order to defray costs of a Fourth of July celebration, primarily because the county lacked the statutory authority to do so. Id.

In N.D.A.G. 2002-L-72, however, I noted that “[o]ur 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.” N.D.A.G. 2002-L-72, citing N.D.A.G. 98-F-30. The city of Stanley is a home rule city. A home rule city can adopt the powers set out in N.D.C.C. § 40-05.1-06 in its home rule charter, including the right to control its finances and fiscal affairs and to engage in any utility, business, or enterprise permitted by the Constitution or not prohibited by statute. N.D.C.C. § 40-05.1-06(2) and (10). Those powers are set out in the Stanley city home rule charter. See Stanley Home Rule Charter, Art. III, §§ 2, 11 (1995).

An issue similar to the one you raise was discussed in N.D.A.G. 98-F-30. In that opinion, the Attorney General concluded that a home rule city could constitutionally donate money to the YMCA, a private entity, if the donation was made in connection with an enterprise authorized by the city’s home rule charter and an implementing ordinance sufficiently detailed to ensure the donation had a public purpose and the public purpose was met. N.D.A.G. 98-F-30. That opinion went on to state:

The home rule charter for the city of Minot authorizes the city to “engage in any utility or enterprise permitted by the constitution or not prohibited by statute” Home Rule Charter, City of Minot, Art. 3, sec. j (1972). No statute prohibits a home rule city from creating an enterprise through which the city could provide funds for the use of a private organization. Thus, it is necessary to determine whether a city’s provision of funds for the use of a private organization such as the YMCA constitutes an enterprise. See [N.D.A.G. 93-F-11].

“[T]he term ‘enterprise’ means any activity which does not violate the North Dakota Constitution or statutes and which is of some scope, complication, or risk.” Id. . . . Participating in a program to provide funds for the use of a private organization such as the YMCA is of some scope, complication, or risk and, therefore, would constitute a permissible enterprise if done appropriately.

Id.

According to your letter and the city council minutes you provided, the nonprofit corporation plans to restore and use the building for learning and youth development. Certainly, participating in a program to provide funds for these purposes may qualify as

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a permissible enterprise since it would not violate the North Dakota Constitution or statutes and would be of some scope, complication, or risk.

Further, any enterprise the city creates must be for a public purpose. See Id. An activity has a public purpose if its objective is to promote public health, safety, welfare, or prosperity. Gripentrog v. City of Wahpeton, 126 N.W.2d 230, 237 (N.D. 1964). The minutes you provided state that a petition was circulated with 370 signatures in favor of saving the church with approximately \$16,000 of pledges. According to the Articles of Incorporation filed with the Secretary of State's office on December 9, 2002, the purpose of the nonprofit corporation is to "enrich the lives of the Stanley communities by establishing programs that will encourage the quest for learning, esthetics, youth development and the fine arts." This enterprise, together with the community support as indicated by the petition and pledges, could well have a legitimate public purpose.

Based on the foregoing, it is my opinion that the city of Stanley, a home rule city, could constitutionally donate money to the nonprofit corporation if the donation is made in connection with an enterprise authorized by the city's home rule charter and an implementing ordinance is passed by the city which is sufficiently detailed to ensure the donation has a public purpose and that the public purpose is being met.

Sincerely,

Wayne Stenehjem
Attorney General

jff/vkk