

**LETTER OPINION  
2005-L-35**

October 20, 2005

Mr. John Mahoney  
Center City Attorney  
PO Box 355  
Center, ND 58530

Dear Mr. Mahoney:

Thank you for your letter asking whether the City of Center (Center) must enter into a joint powers agreement in order for it to donate money to the Center Park District (Park District). If so, you asked whether the parties to the agreement must create a separate entity to administer the joint undertaking. You also asked about the minimum requirements of a joint powers agreement. For the reasons discussed below, it is my opinion that Center may donate money to the Park District provided there is a joint powers agreement between the two political subdivisions. It is my further opinion that a separate entity to administer a joint undertaking is not required and that there are no minimum requirements in N.D.C.C. ch. 54-40.3 for joint powers agreements.

**ANALYSIS**

A political subdivision possesses only those powers expressly granted to it by the Legislature or those necessarily implied from the powers expressly granted.<sup>1</sup> Thus, a political subdivision must have statutory authority to donate money to another political subdivision. The rule of strict construction applies to defining municipal powers.<sup>2</sup>

North Dakota statutes do not expressly or impliedly give cities the authority to give money to park districts. The Legislature has, however, provided political subdivisions the authority to enter into joint powers agreements.<sup>3</sup> A political subdivision may enter into a joint powers agreement with another political subdivision “for the cooperative or joint administration of any power or function that is authorized by law or assigned to one or more of them.”<sup>4</sup> Only one of the parties to the agreement needs to have the statutory

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<sup>1</sup> Ebach v. Ralston, 469 N.W.2d 801, 804 (N.D. 1991). See generally N.D. Const. Art. VII, § 2.

<sup>2</sup> Haugland v. City of Bismarck, 429 N.W.2d 449 (N.D. 1988).

<sup>3</sup> N.D.C.C. ch. 54-40.3.

<sup>4</sup> N.D.C.C. § 54-40.3-01(1).

authority to take the action that is the subject of the joint powers agreement.<sup>5</sup> A park district may agree to cooperatively exercise the powers it has under N.D.C.C. ch. 40-49. Under that chapter, park districts can acquire, maintain, improve, and govern properties for the use and enjoyment of the general public. Park districts also have the authority to accept gifts.<sup>6</sup>

A joint powers agreement may address, among other things, “[t]he manner in which the parties to the agreement will finance the cooperative or joint undertaking. . . .”<sup>7</sup> The law provides flexibility in providing financing for the cooperative or joint undertaking. “The parties . . . may expend funds . . . and otherwise share or contribute property in accordance with the agreement in cooperatively or jointly exercising or carrying out the power or function.”<sup>8</sup> Accordingly, a park district may enter into a joint powers agreement with a city to use money from the city for park purposes.<sup>9</sup> Therefore, it is my opinion that Center must enter into a joint powers agreement with the Park District in order for the city to donate funds to the Park District for general administration, management, and maintenance of its programs and properties.

You also asked whether the parties to a joint powers agreement must create a separate administrative or legal entity to administer the cooperative or joint undertaking. Some provisions that may be included in a joint powers agreement are set forth in N.D.C.C. § 54-40.3-01. That section suggests that a joint powers agreement express its purpose.<sup>10</sup> It gives political subdivisions the discretion, but does not require them, to create a separate administrative or legal entity to administer the cooperative or joint undertaking.<sup>11</sup> Therefore, it is my opinion that political subdivisions that enter into a joint powers agreement are not required to create a separate administrative or legal entity to administer the joint or cooperative undertaking. If the parties to a joint powers agreement decide not to create a separate entity to administer the cooperative or joint undertaking, they may otherwise provide for its administration. For example, they may designate which party or which employees of each or either party will be responsible for administering the cooperative or joint undertaking.

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<sup>5</sup> N.D.A.G. 98-L-192, N.D.A.G. 95-L-115, N.D.A.G. 94-L-258.

<sup>6</sup> N.D.C.C. § 1-08-04

<sup>7</sup> N.D.C.C. § 54-40.3-01(1)(d).

<sup>8</sup> Id.

<sup>9</sup> See also N.D.A.G. 2002-F-03 (joint powers agreement whereby city provides funds to school district to build gymnasium, which will also be available for public use); N.D.A.G. 2000-F-04 (joint powers agreement whereby city sales taxes may be used to fund construction of school to be owned, maintained and primarily used by school district); N.D.A.G. 95-L-115 (joint powers agreement whereby city funds may be accepted by park district to maintain and improve properties under the exclusive authority of a park district).

<sup>10</sup> N.D.C.C. § 54-40.3-01(1)(a).

<sup>11</sup> N.D.C.C. § 54-40.3-01(1)(c).

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Finally, you asked whether there are minimum requirements that must be included in a joint powers agreement. There are no minimum requirements in N.D.C.C. ch. 54-40.3. Section 54-40.3-01, N.D.C.C., sets forth some provisions that may be contained in a joint powers agreement. These are discretionary, and the applicability of each provision to any set of circumstances must be determined separately. I recommend that a joint powers agreement be in writing.<sup>12</sup>

Sincerely,

Wayne Stenehjem  
Attorney General

cwg/lea/vkk

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts. See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).

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<sup>12</sup> N.D.A.G. 2004-L-26.