

**LETTER OPINION  
2007-L-17**

December 7, 2007

Mr. Kenneth L. Dalsted  
Jamestown City Attorney  
PO Box 1727  
Jamestown, ND 58402-1727

Dear Mr. Dalsted:

Thank you for your letter asking several questions concerning whether real property owned by the Jamestown/Stutsman Development Corporation is exempt from real property taxation. It is my opinion that the Jamestown/Stutsman Development Corporation is not exempt from property taxation under statute, and that the existence of a property tax exemption for property used exclusively for charitable or other public purposes under the self-executing provisions in Article X, § 5 of the North Dakota Constitution would be a question of fact for the local taxing authority to determine concerning each parcel of land that the Corporation owns.

**ANALYSIS**

The Jamestown/Stutsman Development Corporation (Corporation) was incorporated as a North Dakota nonprofit corporation in 1992.<sup>1</sup> Its purposes include advancing the business interests of the City of Jamestown and Stutsman County. While its name includes the phrase "development corporation," it was not incorporated as a development corporation under N.D.C.C. ch. 10-30. Instead, the Corporation was created under N.D.C.C. ch. 10-24,<sup>2</sup> which was the nonprofit corporation law at the time.<sup>3</sup>

While it initially named itself as a jobs development corporation, there is no evidence that the City of Jamestown or Stutsman County ever authorized its formation under N.D.C.C. ch. 40-57.4 (City Job Development Authorities) or N.D.C.C. ch. 11-11.1 (County Job Development Authorities). A political subdivision may not form a corporation in the absence of statutory authority,<sup>4</sup> and those chapters do not include authority to form a corporation.

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<sup>1</sup> Bylaws of Jamestown/Stutsman County Jobs Development Corporation, Art. 1, § 1.

<sup>2</sup> Articles of Incorporation of Jamestown/Stutsman County Jobs Development Corporation.

<sup>3</sup> N.D.C.C. ch. 10-24 was repealed and recodified in N.D.C.C. ch. 10-33 by 1997 N.D. Sess. Laws ch. 105.

<sup>4</sup> N.D.A.G. 97-F-07.

Some facts imply a close relationship between the Corporation and the city or county governments. Several of the incorporators are, or were at that time, associated with either the Jamestown city government or the Stutsman County government.<sup>5</sup> Its Bylaws require that Jamestown's mayor (or a designee) and a county commissioner be on the board of directors, and that these individuals also sit on the director's nominating committee.<sup>6</sup> The Corporation serves as a job development authority by expending tax funds supplied to it by the city and county.<sup>7</sup> The Jamestown City Council and the Stutsman County Commission initially approved and periodically review and approve the Corporation's operating policies, budget, and personnel policies.<sup>8</sup> Further, neither you as city attorney, nor counsel for the Corporation, have been able to provide any written contract between the Corporation and either the City of Jamestown or Stutsman County.<sup>9</sup>

These facts, however, do not demonstrate that the Corporation is an agency of either the city or county, or of both, nor do they show that the city or county followed any statutory procedure to create the Corporation itself.

There is statutory authority for a city and one or more political subdivisions to create a joint job development authority by resolution,<sup>10</sup> but that statute was enacted in 1995,<sup>11</sup> three years after the Corporation was incorporated. Even if it could be argued that the later-enacted statute may have been intended to cure any defect in authority if a city and county had previously formed a joint jobs development authority, neither you nor counsel for the Corporation have been able to point to a resolution from the city or the county approving a joint jobs development authority to be created under this statute. Further, this later-enacted statute does not include authority to form a corporation. Therefore, it is my opinion that the Corporation is neither a jobs development authority nor a joint jobs development authority.

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<sup>5</sup> Bylaws of Jamestown/Stutsman County Jobs Development Corporation, Art. 5, § 2, and Art. 9.

<sup>6</sup> *Id.*, Art. 6, § 1, Art. 8, § 1.

<sup>7</sup> Section 40-57.4-04, N.D.C.C. permits a city to levy a job development tax and use the funds "to enter into a contract with [an active] industrial development organization for performance of the functions of a city job development authority." While the Corporation is using job development tax funds to perform this function, there appears to be no contract between the city and the Corporation as required by law. *See* letter from Joseph F. Larson II to Assistant Attorney General Matthew Sagsveen, et al, Nov. 5, 2007.

<sup>8</sup> You provided my office with copies of annual resolutions from the Jamestown City Council which approved the budget and operating policies for the Jamestown/Stutsman Development Corporation, and one resolution approving its personnel policies.

<sup>9</sup> *See* enclosures to letters from Mr. Dalsted to Assistant Attorney General Edward Erickson, July 19, 2007, and letter from the corporation's attorney Joseph F. Larson II to Attorney General Wayne K. Stenehjem, March 28, 2007.

<sup>10</sup> N.D.C.C. § 40-57.4-06.

<sup>11</sup> 1995 N.D. Sess. Laws ch. 395, § 1.

There are other laws which could have an effect if they were utilized. A political subdivision, or two or more political subdivisions together, may choose to form a commerce authority that may be incorporated.<sup>12</sup> This law was enacted in 2003.<sup>13</sup> But no information has been provided that would show the Corporation is a commerce authority. Arguably, the Corporation may fit into the definition of a local development organization,<sup>14</sup> in which case a municipality may, in its discretion, grant partial or complete real property tax exemptions to the local development organization.<sup>15</sup> However, no information has been provided documenting that the city of Jamestown has granted full or partial tax exemption for the Corporation under this statute.

The Corporation originated as a private non-profit corporation and, despite its links to the City of Jamestown and Stutsman County, it remains just a private non-profit corporation. Neither you nor the Corporation's counsel have provided any specific statutory authority for this Corporation to be found to be an agency of the city, the county, or both. Therefore, in reliance on the information provided to me, it is my further opinion that the Corporation is not a political subdivision,<sup>16</sup> nor is it an agency of the City of Jamestown or Stutsman County.

Real property tax exemptions are generally found in N.D.C.C. ch. 57-02, with most being listed in section 57-02-08. A review of this chapter and the materials forwarded to my office do not show that the Corporation fits into any of these statutory exceptions. Therefore, in reliance on the information provided to me, it is my further opinion that the Corporation does not meet any statutory exemption from real property taxation.

The North Dakota Constitution does, however, provide a tax exemption for property "used exclusively for schools, religious, cemetery, charitable or other public purposes."<sup>17</sup> This provision is self-executing, and does not require the Legislature to pass a law for its operation.<sup>18</sup> When interpreting this constitutional exemption for charitable purposes, the North Dakota Supreme Court instructed that its terms be given a liberal, and not a harsh or strained, construction in order that a reasonable result be obtained to effectuate the true intent of the constitutional and statutory provisions.<sup>19</sup> The Court has also held that the stimulation of commercial growth and removal of economic stagnation by means such as the Urban Renewal Law at N.D.C.C. ch. 40-58 are public purposes.<sup>20</sup> Therefore, it is my

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<sup>12</sup> See N.D.C.C. ch. 11-37.

<sup>13</sup> 2003 N.D. Sess. Laws ch. 96.

<sup>14</sup> N.D.C.C. § 40-57.1-02(1).

<sup>15</sup> N.D.C.C. § 40-57.1-04.3.

<sup>16</sup> N.D.A.G. 2007-L-14.

<sup>17</sup> N.D. Const. art. X, § 5.

<sup>18</sup> Lutheran Campus Council v. Bd. of Co. Comm'rs, Ward Co., 174 N.W.2d 362, 367 (N.D. 1970) (Teigen, C.J., Concurring specially); N.D.A.G. 2003-L-16; N.D.A.G. 95-F-05.

<sup>19</sup> Lutheran Campus Council, 174 N.W.2d at 366; Riverview Place, Inc. v. Cass County, 448 N.W.2d 635, 640 (N.D. 1989); N.D.A.G. 2003-L-16.

<sup>20</sup> City of Jamestown v. Leever's Supermarkets, Inc., 552 N.W.2d 365, 369 (N.D. 1996). The court decision was referring to economic development as a public purpose for

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further opinion that economic development is a public purpose exempt from taxation under Art. X, § 5 of the North Dakota Constitution.

While the exclusion from taxation for property used for public purposes in Art. X, § 5 of the North Dakota Constitution is self-executing, the burden of establishing that the property comes within this tax exemption is upon the person or entity who claims the exception, and any doubt must be resolved against the claimant.<sup>21</sup> This presents a question of fact for the taxing authority to decide. The city must first determine whether the organization claiming the exemption fits within the exception and, second, whether the property for which the exemption is claimed is exclusively devoted to the exempt purpose.<sup>22</sup> For those Corporation properties which are determined to be taxable, city or county public funds may not be used to pay real estate taxes or assessments.<sup>23</sup>

Consequently, it is my opinion that real property belonging to the Corporation is exempt from real property taxation under the self-executing provision of Art. X, § 5 of the North Dakota Constitution if the city finds that the Corporation serves a public purpose or purposes and if the property is exclusively used to carry out these public purposes.

Sincerely,

Wayne Stenehjem  
Attorney General

vkk

cc: Joseph F. Larson II  
Fritz Fremgen, Stutsman County State's Attorney

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.<sup>24</sup>

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eminent domain, referring to the provisions in then-existing Art. I, § 16 of the North Dakota Constitution. This constitutional provision was amended by initiated measure on November 7, 2006, to state that “[f]or purposes of this section, a public use or a public purpose does not include public benefits of economic development.” Therefore, while Art. I, § 16 specifically excludes economic development from being a public use or public purpose, that exclusion is solely for purposes of Art. I, § 16 concerning eminent domain. This constitutional amendment is self-limiting, and does not affect other laws or constitutional provisions wherein economic development may be a public use or a public purpose.

<sup>21</sup> Riverview Place, Inc., 448 N.W.2d at 640; see also N.D.A.G. 95-F-05.

<sup>22</sup> Riverview Place, Inc., 448 N.W.2d at 640; see also N.D.A.G. 94-F-07.

<sup>23</sup> See N.D.A.G. 2006-L-09; N.D.A.G. Letter to McLean (Jan. 21, 1988).

<sup>24</sup> See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).