

**LETTER OPINION
2015-L-05**

September 25, 2015

The Honorable Donald Schaible
State Senator
9115 Highway 21
Mott, ND 58646-9200

Dear Senator Schaible:

Thank you for your letter asking several questions related to the discontinuance of a county job development authority.

This office has previously determined that a county job development authority may be discontinued by either a resolution of the board of county commissioners, or by petition and election. Also, the method of discontinuance does not affect how the remaining job development authority funds can be used. Finally, for the reasons stated below, it is my opinion that N.D.C.C. § 11-11-25.1 authorizes the deposit of remaining job development authority funds into the county general fund.

ANALYSIS

You first ask whether a county job development authority may be discontinued or dissolved by either a resolution of the board of county commissioners, or by petition and election. State law provides:

1. The board of county commissioners, by resolution, may create a job development authority for the county, or may discontinue a job development authority which has been created for the county.
 - a. If the authority is created, the question of discontinuing the authority may be placed on the ballot at the next regular election by petition filed with the county auditor at least ninety days before any countywide election and signed by electors of the county who are residents of the area subject to taxation under section 11-11.1-04 equal in number to ten percent of the votes cast in the county in the

subdivision having authority to carry out the purpose for which the taxes were originally levied.⁴

This law suggests that the remaining county job development authority funds may be deposited in the county general fund. As you indicate in your letter, however, two previous Attorney General opinions determined that after a job development authority is discontinued, any remaining money must be used to fund a contract with an industrial development organization for the performance of the functions of a job development authority.⁵ These two opinions concluded that since the chapter on job development authorities did not authorize the funds to be used in any other way, they must be used to accomplish the purposes of a job development authority through a contract with an industrial development organization. However, neither of those Attorney General opinions contemplated whether N.D.C.C. § 11-11-25.1 might provide the authority for the remaining funds to be deposited into the county general fund.

Section 11-11-25.1, N.D.C.C., unambiguously states that moneys collected by tax levy for a specific purpose may be deposited into the county general fund if not expended within two years after their collection.⁶

In the scenario you pose, taxes were levied under N.D.C.C. § 11-11.1-04 to be used for the specific purpose of a county job development authority. The county job development authority was discontinued and there are tax levy funds remaining. It is my opinion that a tax for a “specific purpose” in N.D.C.C. § 11-11-25.1, includes a tax for a job development authority. Therefore, it is my opinion that N.D.C.C. § 11-11-25.1 authorizes the deposit of remaining job development authority funds into the county general fund.

This opinion overrules N.D.A.G. Letter to Whitman (July 25, 1990) and N.D.A.G. Letter to Halpern (Mar. 31, 1986), which determined that any remaining job development authority funds could only be used to enter into a contract with an industrial

⁴ N.D.C.C. § 11-11-25.1 (emphasis added).

⁵ See N.D.A.G. Letter to Whitman (July 25, 1990) and N.D.A.G. Letter to Halpern (Mar. 31, 1986).

⁶ A review of the legislative history of N.D.C.C. § 11-11-25.1 does not suggest that the placement of the statute immediately following other statutes related to a county’s extraordinary outlay of money requiring approval of the electors limits its applicability to only those extraordinary expenditures.

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development organization for the performance of the function of a job development authority.⁷

Sincerely,

Wayne Stenehjem
Attorney General

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.⁸

⁷ The remaining funds may be used to enter into a contract with an industrial development organization, or they may be deposited in the county general fund pursuant to N.D.C.C. § 11-11-25.1.

⁸ See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).