

**N.D.A.G. Letter to Slorby (Jan. 23, 1989)**

January 23, 1989

Mr. Tom P. Slorby  
Ward County State's Attorney  
Ward County Courthouse  
Minot, ND 58701

Dear Mr. Slorby:

Thank you for your letter of January 17, 1989, concerning the legality of a proposed county donation to the Minot Railroad Museum Association.

N.D. Const. art. X, § 18 prohibits a political subdivision from making a donation, not for the benefit of the poor, to any association or individual unless the Legislature has authorized the donation to be made by the political subdivision. Gripentrog v. City of Wahpeton, 126 N.W.2d 230 (N.D. 1964); Patterson v. City of Bismarck, 212 N.W.2d 374 (N.D. 1973). Thus, to avoid the prohibition contained within N.D. Const. art. X, § 18, appropriate legislation must exist authorizing the contemplated donation.

I agree with the statement in your letter that N.D.C.C. §§ 11-11-53, 57-15-10.1 are the only statutory provisions which could be applicable in this factual situation. Unless one of these statutes justifies the contemplated expenditure, N.D. Const. art. X, § 18 appears to prohibit the donation.

N.D.C.C. § 11-11-53 permits for two separate appropriations for historical purposes. Subsection 1 of the statute authorizes the county commissioners to appropriate an amount, not exceeding \$5,000 annually, to be paid to that county's historical society for the promotion of historical work within the county's boundaries. Subsection 2 of the statute provides that the county commissioners may levy a tax for the promotion of historical works within the county's boundaries and for the defraying of expenses in carrying out historical work in the county. The tax levy discussed in subsection 2 is in addition to any moneys appropriated under subsection 1.

Your letter indicates that the board of county commissioners has already levied the tax authorized by N.D.C.C. § 11-11-53(2) and distributed those funds. Thus, any additional expenditure for historical purposes must be made under section 11-11-53(1). As noted, there is a \$5,000 cap on funds appropriated under this subsection.

Based upon these facts, I concur with your opinion that a county cannot expend more than an additional \$5,000 for historical purposes, as provided for by N.D.C.C. § 11-11-53(1), where the tax levy provisions of N.D.C.C. § 11-11-53(2) have already been exhausted.

The applicability of N.D.C.C. § 57-15-10.1 presents a more difficult question. That statute does not discuss historical matters at all. However, it does allow the county commissioners or the governing body of any city to levy a tax annually for the purpose of advertising the resources and opportunities in the county or city and to promote industrial development. From your letter, it appears that the proposed historical project would include some advertisement of Ward County. The question is whether N.D.C.C. § 57-15-10.1 and the advertisement in question justify the contemplated donation.

As you know, opinions of the Attorney General are restricted to questions of law. I am not authorized to make factual determinations in deciding whether a statute applies to a particular set of facts. In this case, the issue is whether including an acknowledgement of Ward County in the contemplated project constitutes "advertising . . . the resources and opportunities in the county or . . . promoting industrial development." Clearly, this is a factual question rather than a legal question. As such, I am unable to provide an opinion on this issue.

In your letter, you state that you have concluded that the provisions of this project do not satisfy the requirement of N.D.C.C. § 57-15.10.1. For the reasons noted previously, I am unable to review your determination and must defer to your judgment in this matter.

Sincerely,

Nicholas J. Spaeth

cv