

N.D.A.G. Letter to Hagerty (March 13, 1986)

March 13, 1986

Ms. Gail Hagerty
Burleigh County State's Attorney
Burleigh County Courthouse
514 East Thayer Avenue
Bismarck, ND 58501

Dear Ms. Hagerty:

Thank you for your letter of February 18, 1986, concerning a payment to be made by the Burleigh County Board of County Commissioners to the Bismarck Economic Development Committee. According to your letter, this payment is to be used in the economic development of Burleigh County.

I have also received a letter from Myron Atkinson indicating that the proposed payment is to be used for the promotion of industrial development within Burleigh County, including the advertising of the resources and opportunities existing within the county. The question appears to be the legality of the proposed payment by the Burleigh County Board of County Commissioners.

North Dakota law as found at N.D.C.C. §57-15-10.1 authorizes the board of county commissioners of any county or the governing body of any city to levy a tax for the purpose of advertising the resources and opportunities in the county and city and promoting industrial development. Limitations on the tax to be levied are referenced in other sections of the Century Code. Finally, the statute indicates the expenditure of funds as provided by the statutes shall be under the direction of the governing boards of the county or city.

Simply put, N.D.C.C. §57-15-10.1 authorizes the governing bodies of cities and counties to levy a tax for the purpose of advertising the resources and opportunities existing within the county or city and promoting industrial development. Furthermore, the statute allows the expenditure of funds from this pool apparently for these very purposes under the direction of the governing body.

In applying N.D.C.C. §57-15-10.1 to those facts provided by Mr. Atkinson and you, it seems to me that three questions readily occur:

1. Whether the board of county commissioners levied a tax for the purpose of advertising the resources and opportunities in Burleigh County and further promoting the industrial development of the county.

2. Whether the proposed expenditure of funds results from the moneys collected as a result of the tax levy authorized by N.D.C.C. §57-15-10.1.
3. Whether the proposed expenditure of funds in favor of the Bismarck Economic Development Committee is for the purpose of advertising the resources, opportunities, and industrial development within Burleigh County.

The facts as outlined in your letter and that of Mr. Atkinson do not provide sufficient information to answer these questions. Furthermore, the answers to the above questions can only be determined by a review of the facts involved and, therefore, constitute questions of fact rather than of law. As to such questions of fact, I believe that I am not the appropriate person to make such determinations nor upon which I should render an opinion.

However, I can readily conclude that where the answers to the three questions I have just outlined are in the affirmative, such a proposed expenditure of funds would be in compliance with North Dakota law.

Sincerely,

Nicholas J. Spaeth

ja

cc: Myron Atkinson