

N.D.A.G. Letter to Halpern (March 31, 1986)

March 31, 1986

Mr. Mike L. Halpern
Glen Ullin City Attorney
P.O. Box M
Glen Ullin, ND 58631

Dear Mr. Halpern:

Thank you for your letter of January 30, 1986, requesting an opinion on two questions.

Your first question is what is "an active industrial development organization" within the context of the provisions of N.D.C.C. § 11-11.1-06.

N.D.C.C. Ch. 11-11.1 gives a board of county commissioners the authority to create a job development authority. N.D.C.C. § 11-11.1-06 authorizes a board of county commissioners to contract with an active industrial development organization for the performance of those services which would otherwise be provided by the job development authority.

N.D.C.C. Ch. 10-30 authorizes the creation of development corporations for the purpose of developing business and economic prosperity in the state. N.D.C.C. § 10-30-01 (2)(a) provides that the name of these development corporations "shall contain the words 'state development corporation.'"

Therefore, it is my opinion that "an active industrial development organization" within the context of the provisions of N.D.C.C. § 11-11.1-06 means a development corporation organized pursuant to the provisions of N.D.C.C. Ch. 10-30.

Your second question is what happens to any accumulated tax revenue that has been raised for a job development authority, if the job development authority is discontinued by a vote of the county electorate pursuant to the provisions of N.D.C.C. § 11-11.1-04.

N.D.C.C. § 11-11.1-04 provides as follows:

11-11.1-04. TAX LEVY FOR JOB DEVELOPMENT AUTHORITIES. The board of county commissioners of a county which has a job development authority shall establish a job development authority fund and levy a tax not exceeding the limitation on subsection 29 of section

57-15-06.7. The county treasurer shall keep the fund separate from other money of the county and transmit all funds received pursuant to this section within thirty days to the board of directors of the job development authority. The funds when paid to the job development authority shall be

deposited in a special account in which other revenues of the job development authority are deposited and may be expended by the job development authority as provided in sections 11-11.1-02 and 11-11.1-03.

In North Dakota, the general rule is that counties are creatures of the constitution and may speak and act only in the manner and on matters prescribed by the Legislature in statutes enacted pursuant to constitutional authority. County of Stutsman v. State Historical Society, 371 N.W.2d 321, 329 (N.D. 1985).

Without "legislative authorization . . . taxes levied for a specific purpose cannot be used for other purposes." Thus, "tax money in a special fund is not available for current expenses." 16 McQuillin, *Municipal Corporations*, 44.186 (3d. Ed. 1970 & Supp. 1984).

Not only are the funds which are raised by this levy deposited into a special account, the only alternative use that is specified for these funds is to fund a contract with an industrial development organization. N.D.C.C. § 11-11.1-06.

Unlike some specified levies (e.g., N.D.C.C. §§ 57-15-17 (2)(3), 57-15-22.2, and 57-19-09), the levy provisions for a job development authority contain no language which would authorize a transfer of unused funds to the general fund of the county.

Therefore, it is my further opinion that any accumulated tax revenue that has been raised for a job development authority may only be used to fund a contract with an industrial development organization if the job development authority is discontinued by a vote of the county electorate.

Sincerely,

Nicholas J. Spaeth

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