

N.D.A.G. Letter to Whitman (July 25, 1990)

July 25, 1990

Mr. Charles Whitman
City Attorney
P.O. Box 5503
Bismarck, ND 58502

Dear Mr. Whitman:

Thank you for your June 25, 1990, letter concerning petitions asking that a job development authority created pursuant to N.D.C.C. ch. 40-57.4 be discontinued.

Your first question is whether the city commission may call a special election to decide the issue. I agree with your conclusion on this question. N.D.C.C. § 40-57.4-01 provides in unambiguous terms that the question of discontinuing the authority must be placed on the ballot "at the next regular election." Where the legislature has authorized the calling of special elections, it has done so specifically and without ambiguity. See, e.g., N.D.C.C. §§ 40-09-10, 40-12-06. Without explicit authority to call a special election on this matter, the city commission may not do so and must place the issue on the ballot at the next regular election.

Your second question is whether the petitions asking the job development authority to be discontinued suspends the creation of that authority until the matter is decided at the election. Again, I believe you have reached the correct conclusion. N.D.C.C. § 40-57.4-01 is silent regarding suspension occurring upon filing of the petitions. Absent explicit authority suspending the creation of the authority upon the filing of the petitions, I concur that the authority should continue until the matter has been resolved by the voters.

Finally, your last question concerns the use of job development authority tax levy money if the job development authority is discontinued by the voters. A similar question occurred in 1986 concerning the county job development authority as found in N.D.C.C. ch. 11-11.1. N.D.C.C. § 11-11.1-04 allows the levy of a tax for a job development authority. N.D.C.C. § 11-11.1-06 states that in lieu of establishing the job development authority, the tax levy money may be used to enter into a contract with an industrial development organization to perform the functions of a job development authority. Glen Ullin city attorney Mike Halpern inquired concerning the distribution of the job development tax levy where the job development authority had been discontinued by a vote of the county electorate pursuant to the provisions of N.D.C.C. § 11-11.1-04. I concluded that there was no language authorizing the transfer of unused funds to the general fund of the county and that general legal principles required that where moneys were deposited into a special account they had to be used for that particular purpose and could not be used for an unrelated purpose. Therefore, I concluded that where a job development authority was discontinued by the county voters, any accumulated tax levy moneys raised for that job development authority

could only be used to fund a contract with an industrial development organization performing the functions of job development authority as authorized by N.D.C.C. § 11-11.1-06.

The provisions of N.D.C.C. ch. 40-57.4 are quite similar to those of N.D.C.C. ch. 11-11.1. N.D.C.C. § 40-57.4-04 provides for a tax levy for a city job development authority. The second paragraph of the statute states that instead of establishing a job development authority, the city governing body may use the funds to enter into a contract with an industrial development organization for the performance of the city job development authority function.

Therefore, I believe my 1986 opinion concerning the county job development authority applies as well to a city job development authority. Where the city voters have discontinued the job development authority pursuant to N.D.C.C. § 40-57.4-01, any accumulated moneys in the job development authority fund may only be used to enter into a contract with an industrial development organization for the performance of the functions of a city job development authority.

I hope this discussion is helpful to you and the Bismarck city officials.

Sincerely,

Nicholas J. Spaeth

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