

N.D.A.G. Letter to Brovold (Dec. 16, 1986)

December 16, 1986

Mr. Jay Brovold
Billings County State's Attorney
P.O. Box 187
Medora, ND 58645

Dear Mr. Brovold:

Thank you for your letter of December 3, 1986, requesting our opinion on two questions.

The first question involves a proposed purchase of real estate by Billings County of land located outside of Billings County. After the land is purchased, the land would then be sold on a contract for deed to the Southwest District Health Unit of which Billings County is a member.

We are unable to locate any authority for a county to purchase land outside of the county for this purpose. N.D.C.C. § 11-11-14(11) authorizes the county commissioners to purchase lands in lieu of those sold. N.D.C.C. § 11-11-16 authorizes the board to purchase sites for county buildings. N.D.C.C. § 11-11-19 authorizes the commissioners to purchase land for the purpose of beautifying county buildings or preventing the erection of other buildings close to the courthouse and jail. It would appear, based upon the facts presented in your letter, that none of these statutes would be applicable.

Even if authority for this purchase could be located, any attempt at the disposal of such real property would have to be made pursuant to N.D.C.C. Ch. 11-27. This particular chapter provides procedures for the public disposal of property which is estimated by the board of county commissioners to have a value of \$1,000 or more. Only if such property is estimated to have a value of less than \$1,000 may it be sold at private sale by the board.

However, the objectives behind the arrangement whereby a county assists a district health unit in the purchase of a building to be used by the health unit in providing services to several communities can be accomplished through the joint exercise of governmental powers. This subject is addressed in N.D.C.C. Ch. 54-40 and allows governmental entities to agree to jointly or cooperatively exercise their respective separate powers or any power common to the contracting powers (regardless of territorial limitations) for the purpose of acquiring, constructing, and maintaining any building for their joint use. N.D.C.C. § 54-40-01. To carry out the purposes of the joint agreement, disbursements from public funds, including funds already raised to buy real estate for public buildings, may be used. N.D.C.C. § 54-40-03. In addition, N.D.C.C. § 54-40-08 authorizes public entities to agree and to use public funds for the joint exercise of one or more of their functions or duties assigned by law.

I believe that the joint exercise of governmental powers was the method whereby the Southwest County Correctional Center in Dickinson was constructed. The purposes outlined in your letter sought to be achieved by the Billings County Board of County Commissioners and the Southwest District Health Unit may be achieved by application of N.D.C.C. Ch. 54-40.

The second question you have outlined concerns MIDA bonds issued by a county for a project located outside of the county. N.D.C.C. Ch. 40-57 authorizes the issuance of municipal industrial development bonds (MIDA bonds). The statutes specifically authorize counties to exercise such authority (N.D.C.C. § 40-57-02). Furthermore, the property acquired by the issuance of the bond for the project must be located wholly within the boundaries of the city or the county issuing the bonds unless a contract or agreement between the city or the county in which part or all of the property is located is entered into as authorized by N.D.C.C. § 40-57-03(8).

Thus, in answer to your question, Billings County does have the authority to issue MIDA bonds on a project located outside of Billings County so long as the city or county in which the project is located has entered into an agreement with Billings County pursuant to N.D.C.C. § 40-57-03(8).

The second half of your question inquires as to the ability of the county to pledge a reserve fund to back the issuance of MIDA bonds by a city not within Billings County. We are unable to locate any such authority given to a county to provide public moneys for a bond guarantee fund for the issuance of MIDA bonds by another entity. Instead, the only discussion we find in the statutes concerning the subject involves the industrial development revenue bond fund as administered by the Economic Development Commission for this very purpose. N.D.C.C. Ch. 6-09.2. Thus, it is our conclusion that a county does not have the authority to pledge a reserve fund to back the issuance of MIDA bonds by another governmental entity.

Sincerely,

Nicholas J. Spaeth

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