

Date Issued: July 15, 1987 (AGO 87-15)

Requested by: Charles E. Johnson, City Attorney

Coleharbor, North Dakota

- QUESTION PRESENTED -

Whether a city can continue to certify special assessments for collection to pay for an improvement project, even though the principal and interest on debt issued for the financing of the improvement project under N.D.C.C. chapter 40-24 have been fully paid.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that a city can continue to certify special assessments for collection to pay for an improvement project, even though the principal and interest on debt issued for the financing of the improvement project under N.D.C.C. chapter 40-24 have been fully paid.

- ANALYSIS -

N.D.C.C. chapter 40-24 governs the establishment and use of special assessment funds. N.D.C.C. section 40-24-11 states, in part, as follows:

The annual certification shall continue until the amount of moneys on deposit in the fund established pursuant to section 40-24-18 is sufficient to cover outstanding principal of and interest on any obligations issued to fund such projects, and in addition thereto, to repay the city for any payments made by the city to fund deficiencies in the fund established pursuant to section 40-24-18.

(Emphasis supplied.)

This section specifically authorizes the city to continue to certify special assessments to be levied and collected for purposes beyond the repayment of principal and interest on debt obligations. Specifically, it allows for repayment to the city of advances the city has made to the fund to meet deficiencies in the fund. The city may have made these advances from sources such as its general fund. If it is assumed that the debt issued has been fully or partially paid under other applicable sections of N.D.C.C. chapter 40-24, then the repayment of that debt according to its terms may have necessitated the use of moneys other than moneys levied and collected annually as special assessments. The special assessments which were routinely certified may have been insufficient if, under the language of the debt instrument, they could be put back to the city for payment at the option of the holder or redeemed at the option of the city prior to their original stated maturity date. Although the city has other alternatives for funding the early repayment of the debt, including the alternative of levying a deficiency levy under N.D.C.C. section 40-26-08, the city could choose to use moneys from its general fund. (See 1987 N.D. Attorney General's Opinion 87-7.)

Although North Dakota courts have not specifically addressed this question under N.D.C.C. section 40-24-18, a predecessor of this section was section 2183 of the Revised Code of 1895. That section was interpreted by the North Dakota Supreme Court to allow a city to reimburse itself for special improvements from the collected special taxes when it held:

But a city is permitted to contract for the payment of special improvements from money in its treasury, relying for its reimbursement upon the special taxes when collected. Under this method of payment for improvements, the city controls and owns the moneys collected from the special assessments, and can apply them to any general account of the city without violating the mandate of section 2183, Rev. Codes 1895. The object and purpose of the statute is fulfilled when the cost of the improvement is paid for by the property benefited by it, and the special fund is as much devoted to the accomplishment of this purpose when taken by the city in payment of moneys already advanced by it on the improvement as if the assessment fund were paid directly to the contractor.

Pine Tree Lumber Co. v. City of Fargo 96 N.W. 357, 365 (1903).

The funding by the city of the payment of principal and interest on debt from a source other than moneys deposited as collected special assessments was a circumstance contemplated under N.D.C.C. section 40-24-11. The purpose of this section is to have the improvement paid for by the property benefited by the improvement. The city could continue to certify the levy of special assessments and use those moneys once collected to reimburse itself until the full amount of the original advance to meet the deficiency in debt service has been paid.

- EFFECT -

This opinion is issued pursuant to N.D.C.C. section 54-12-01. It governs the actions of public officials until the question is presented and decided by the courts.

NICHOLAS J. SPAETH  
Attorney General

Assisted by: Gary Bauer  
Assistant Attorney General