

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 91-04

Date issued: March 6, 1991

Requested by: Charles R. Isakson
Hazen City Attorney

- QUESTION PRESENTED -

Whether a city job development authority has the power to use tax levy fund moneys to assist in a project located outside the city limits.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that a city job development authority may use tax levy fund moneys for projects located outside the city limits if the projects will "encourage and assist in the development of employment within the city."

- ANALYSIS -

"The city job development authority shall use its financial and other resources to encourage and assist in the development of employment within the city." N. D. C. C. ' 40-57.4-03 (emphasis added). "Words used in any statute are to be understood in their ordinary sense, unless a contrary intention plainly appears, but any words explained in this code are to be understood as thus explained." N. D. C. C. ' 1-02-02.

The phrase "within the city" is a phrase of limitation. Because the phrase is not explained in the code, it must be given its ordinary meaning. The word "within" is ordinarily understood to mean inside, not to exceed the boundaries. This comports with the definition contained in Webster's New Twentieth Century Dictionary, Unabridged (2d edition 1963): "in the inner part of; inside of; opposed to 'without'; . . . in the limits or compass of; not beyond in distance, time, degree, etc.; . . . inside the limits of; not exceeding; not overstepping, etc.;. . ."

N. D. C. C. ' 40-57.4-03 contains the phrase "within the city" twice; once as quoted above and the second time in subsection 3. "To hire professional personnel skilled in seeking and promoting new or expanded opportunities within the city." N. D. C. C. ' 40-57.4-03(3) (emphasis added).

"When the wording of a statute is clear and free of all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." N. D. C. C. ' 1-02-05. Consequently, it is my opinion that any funds expended by the jobdevelopment authority must be for the purpose of increasing jobs within the city limits.

However, a further question remains. Must the assistance be provided to a project which will directly provide the additional jobs within the city or may it be provided to a project outside the city which will indirectly increase

the number of jobs available within the city? To answer that question it is necessary to look at the legislative history.

The statute and the legislative history indicate that the object of the statute is to provide economic development by providing a mechanism to increase the jobs available in a city. If the statute is construed to limit the projects which can be supported to those located physically in a city, many projects, and therefore much economic development, might be foregone. On the other hand, if a city could assist in a project located outside the city limits which would result in increased jobs within the city, even if the jobs were with other nonrecipient companies, more opportunities for economic development would exist. It is therefore my opinion that a city jobs development authority may use tax levy funds for projects located outside the city limits if the projects will "encourage and assist in the development of employment within the city." Whether a particular project will achieve this goal is a question of fact which must be addressed separately in each case by the jobs development authority.

- EFFECT -

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

Nicholas J. Spaeth
Attorney General

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