

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 94-F-01

Date issued: January 11, 1994

Requested by: Michel W. Stefonowicz, Noonan City Attorney

- QUESTION PRESENTED -

Whether a city may transfer general fund moneys to a job development authority to be used to encourage and assist in the development of employment within the city, or whether the city may only transfer to the authority moneys collected or the amount which would be collected through the levy of a job development authority tax.

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It is my opinion that a city may transfer general fund moneys to a job development authority to be used to encourage and assist in the development of employment within the city subject only to general fund spending limitations.

- ANALYSIS -

The preparation and adoption of a municipal budget is governed by N.D.C.C. ch. 40-40. N.D.C.C. ? 40-40-04 directs each city governing body to prepare an annual preliminary budget statement "showing the amounts of money which, in the opinion of the governing body, will be required for the proper maintenance, expansion, or improvement of the municipality during the year, and giving other information relating to the finances of the municipality as the state auditor may require." N.D.C.C. ? 40-40-05 directs that the contents of the preliminary budget statement "include a detailed breakdown of the estimated revenues and appropriations requested for the ensuing year for the general fund, each special revenue fund, and each debt service fund of the municipality." The preliminary budget statement "must also include any transfers in or out and the beginning and ending fund balance for each of the funds." After the preliminary budget statement is prepared, notice is provided to the city's general public under N.D.C.C. ? 40-40-06. A hearing on the preliminary budget statement and preparation of the final budget is set pursuant to N.D.C.C. ? 40-40-08.

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N.D.C.C. ? 40-40-09 provides for a determination of the amount to be levied, adoption of the levy, and sets certain limitations. For example, "[t]he amount levied is subject to the . . . limitation that the amount may not exceed the levy requested by the municipality" and "[t]he levy adopted must appropriate in specific amounts the money necessary to meet the expenses and liabilities of the municipality." N.D.C.C. ? 40-40-09.

N.D.C.C. ch. 57-15 regulates how moneys are collected via tax levies. N.D.C.C. ? 57-15-07 provides "[t]he governing body, in levying city taxes, is limited by the amount necessary to meet the appropriations included in the city budget for the ensuing fiscal year and to provide a reserve fund as limited in this chapter, together with a tax sufficient in amount to pay the interest on the bonded debt of the municipality, and to provide a sinking fund to pay the principal at maturity." N.D.C.C. ? 57-15-08 sets a general tax levy limitation for cities. However, additional property tax levy authority is provided under 1993 N.D. Sess. Laws ch. 548. N.D.C.C. ? 57-15-10 creates a number of exceptions to the tax levy limitations specified in N.D.C.C. ? 57-15-08 with the specific provision that "[t]axes levied for a city job development authority as provided in section 40-57.4-04 may be levied in an amount not exceeding four mills." N.D.C.C. ? 57-15-10(28). This particular subsection suggests that a city might be limited in providing funding to a job development authority to that amount of money which would be raised by a four-mill levy. However, N.D.C.C. ? 57-15-10(28) is not applicable to the transfer of general fund moneys to a job development authority as indicated by the North Dakota Supreme Court in Peterson v. McKenzie County Pub. Sch. Dist. No. 1, 467 N.W.2d 456 (N.D. 1991).

In Peterson, 467 N.W.2d at 457, the McKenzie County Public School District had transferred moneys from its general fund to its building fund and that transfer was challenged by certain school district residents who sought to have those moneys replaced in the general fund. In its analysis, the court acknowledged that school boards are given extensive discretionary powers and that the powers conferred upon school boards included the raising of funds for the operation and maintenance of the schools, and the management and disposition of such funds. The court stated that "[o]ur Legislature has

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provided school boards with extensive discretionary powers relating to the raising, management, and disposition of funds for the operation and maintenance of schools." Id. at 458. The court, after an extensive comparison of various statutes concerning the levy of general and special fund taxes by a school district, concluded that a listing of general purposes for which general fund moneys may be expended does not necessarily preclude using those funds for other legitimate purposes and that the statutes which authorize the levy of a school building tax did not preclude the transfer of money from a school district's general fund to its building fund. The court stated "the fact that some statutes, such as ? 57-15-17(1)(b), N.D.C.C., specifically restrict the use of special funds, while none specifically restricts the use of general funds, indicates that general fund money may be used for any legitimate purpose." Id. at 460.

Based upon the holding and analysis of Peterson v. McKenzie County Public School District, this office concluded that a county board of commissioners may transfer general fund moneys to a county job development authority to be expended for purposes consistent with N.D.C.C. ch. 11-11.1. Letter from Attorney General Nicholas J. Spaeth to Representative Kenneth N. Thompson (April 15, 1992), at 5. Attorney General Spaeth reasoned:

The court in Peterson rejected the argument that N.D.C.C. ?? 57-15-16 and 57-15-17 comprise the exclusive authority granted to school districts by the Legislature to deal with building matters. The court stated that N.D.C.C. ? 57-15-16 does not preclude the use of general fund moneys for building purposes and that it expands a school board's taxing authority rather than limiting that authority. The court also stated that N.D.C.C. ? 57-15-17(1)(a), by allowing for moneys from 'other sources' to be placed in a school building fund, allows the transfer of money from the school district's general fund to the school building fund.

N.D.C.C. ? 11-11.1-04 allows for the deposit of 'other revenues' in a job development authority fund. Following the analysis of the court in Peterson, it is my opinion that this language is broad enough to include a transfer of legally

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available general fund moneys by a board of county commissioners to a job development authority fund.

Id. at 4-5. The reasoning in that opinion applies equally well to the authority of city governing bodies to fund city job development authorities because of the similarity in statutory language in the creation of the two types of job development authorities. Accordingly, the amount certified by a city job development authority pursuant to N.D.C.C. ? 40-57.4-03 would not apply to a transfer of general fund moneys to a city job development authority.

In conclusion, it is my opinion that a city can budget annually for job development authority projects when revenues will be derived from general fund taxes and not a job development tax and that the amount so budgeted is not limited by the cap on a job development authority tax. Beyond the amount budgeted for the job development authority, the city governing body may transfer other legally available general fund moneys to the job development authority to be used for purposes consistent with N.D.C.C. ch. 40-57.4.

- 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.

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ATTORNEY GENERAL

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