

**LETTER OPINION**  
**95-L-251**

November 7, 1995

Mr. John R. Gregg  
Dunseith City Attorney  
P.O. Box 26  
Bottineau, ND 58318-0026

Dear Mr. Gregg:

Thank you for your letter asking whether a city has the authority to issue revenue bonds pursuant to N.D.C.C. ch. 40-35 to fund improvements for a nursing home.

Local governmental entities have only those powers expressly granted to them by the Legislature or those necessarily implied from the powers expressly granted. See, e.g., Parker Hotel Co. v. City of Grand Forks, 177 N.W.2d 764, 768 (N.D. 1970).

The powers of municipalities are generally found in N.D.C.C. ch. 40-05. However, N.D.C.C. ch. 40-35 (Revenue Bond Law) specifically grants cities authority to issue revenue bonds for specific purposes. Subsection 7 of N.D.C.C. § 40-35-02 defines an "undertaking" for which a city may issue revenue bonds as including property useful in connection with the "purchase, acquisition, construction, maintenance, and operations of a hospital." N.D.C.C. § 40-35-03(3) authorizes a city to issue revenue bonds to finance an undertaking.

N.D.C.C. ch. 40-35 does not define "hospital." The term must therefore be understood in its ordinary sense. See N.D.C.C. § 1-02-02. As generally understood, the term "hospital" includes nursing homes. See The American Heritage Dictionary, 624 (2d coll. ed. 1991) (defining "hospital" as an institution that provides medical care and treatment for the sick and the injured; a home for old people and the infirm); Letter from Attorney General Heidi Heitkamp to John R. Gregg (April 24, 1995); 1970-72 N.D. Op. Att'y Gen. 250 (the term "hospital" is broad enough to include nursing homes). See also St. Vincent's Nursing Home v. Dept. of Labor, 169 N.W.2d 456 (N.D. 1969) (finding nursing home to be exempt from Labor-Management Relations Act because it is a hospital); Genuth v. Hynes, 384 N.Y.S.2d 866, 867 (N.Y. App. Div. 1976) (a nursing home falls within the definition of a hospital); Reserve Life Ins. Co. v. Marr, 254 F.2d 289, 291 (9th Cir. 1958) (licensed nursing home deemed hospital for purposes of insurance coverage).

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The conclusion that the term "hospital" includes nursing homes is supported by the fact that North Dakota law makes no distinction between nursing homes and hospitals for licensing purposes. See N.D.C.C. ch. 23-16; Bush v. N.D. Health Council, 128 N.W.2d 866, 869 (N.D. 1964).

Because the term "hospital" in N.D.C.C. § 40-35-02(7) encompasses a "nursing home" in the definition of an allowable revenue producing undertaking, and because a city is authorized by N.D.C.C. § 40-35-03(3) to issue revenue bonds to finance the acquisition, construction, reconstruction, improvement, betterment or extension of such an undertaking, it is my opinion that a city may lawfully issue revenue bonds under N.D.C.C. ch. 40-35 for the purpose of financing improvements to a city-owned and operated nursing home.<sup>1</sup>

Sincerely,

Heidi Heitkamp  
ATTORNEY GENERAL

jjf/pg

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<sup>1</sup> N.D.C.C. ch. 40-35 does not generally authorize a city to issue so-called private activity bonds for a nursing home facility owned or operated by a non-governmental entity. See generally N.D.C.C. ch. 40-57.