

N.D.A.G. Letter to Mehrer (July 23, 1987)

July 23, 1987

Mr. Owen K. Mehrer
State's Attorney
P.O. Box 130
Dickinson, ND 58601

RE: West River Dakota Dome Enabling Agreement

Dear Mr. Mehrer:

You have asked for my approval of a document entitled "Enabling Agreement for West River Dakota Dome" pursuant to N.D.C.C. ch. 54-40. The agreement is for the establishment and operation of a regional multipurpose facility known as West River Dakota Dome. Funds to build the facility are to come from both private and public sources with the state contributing the land to the project. The dome is to be built with these funds and then, presumably, the state will "accept" ownership of the dome at some point in the future and manage it. Authority to accept the facility was granted by the Legislature in 1983. 1983 N.D. Sess. Laws ch. 189.

Agreements for joint exercise of governmental powers are governed by N.D.C.C. ch. 54-40. Acquiring, constructing, and maintaining buildings are specific purposes for which two or more governmental agencies may agree. N.D.C.C. § 54-40-01. Such entities may also agree between themselves on the use of such facilities. N.D.C.C. § 54-40-08(2). The Enabling Agreement clearly furthers the purposes of chapter 54-40; that is exercising joint governmental power to construct a public use facility which otherwise could or would not have been created by any single entity.

It is my understanding that public funds will not be given to West River Expo as that entity is private and not covered by chapter 54-40. This office ruled in 1985 that a city could not contribute money to a private, nonprofit corporation to construct a facility not to be owned by the city. 1985 N.D. Op. Att'y. Gen. 43. That same opinion did indicate that chapter 54-40 could be utilized between the city of Dickinson and the Board of Higher Education.

While it is my opinion that the Agreement is legally sufficient and that Stark County could contribute funds to build the dome, I would direct your attention to N.D.C.C. § 54-40-05 which states:

54-40-05. AGREEMENT SHALL PROVIDE FOR DISPOSITION OF PROPERTY. Such agreement shall provide for the disposition of any property acquired as the result of such joint or cooperative exercise of powers, and the return of any surplus moneys in proportion to contributions

of the several contracting parties after the purpose of the agreement has been completed.

Since the property will be gifted to the state with the time of acceptance to be later determined, the "disposition" would be that the state would have complete ownership of the facility. If the dome is never accepted by the state, then the agreement provides that the city is to have ownership. It is also my understanding that an escrow account will be executed which will provide for disposition of any "surplus moneys" for construction, and with that assumption N.D.C.C. § 54-40-05 could be satisfied.

Sincerely,

Nicholas J. Spaeth

cv

cc: Gordon Schnell
Vince Ficek