

**OPINION
64-116**

April 23, 1964 (OPINION)

ECONOMIC DEVELOPMENT COMMISSION

RE: Appropriation - Proper Expenditures

This is in reply to your letter of April 20, 1964, relative to Gripentrog v. City of Wahpeton, 126 N.W.2d. 230 (N.D. 1964). You state the following facts:

As you know, the North Dakota Municipal Industrial Development Act was recently upheld by the North Dakota Supreme Court. A test case was carried out in which the city of Wahpeton acted as the defendant.

The Economic Development Commission would like to receive your opinion if it can legally assist Wahpeton in the court costs involved in this test case. For the past several years, the Economic Development Commission has been encouraging some city in North Dakota to test the constitutionality of the act. Wahpeton agreed to do so in preparation for the possible use of the act in financing the new sugar beet plant in their city. It was understood that the Economic Development Commission would financially assist in the costs involved in the test case.

We note some of the functions and duties of the Economic Development Commission, as set forth in section 54-34-02 of the North Dakota Century Code, are:

to promote the general welfare of the state through the establishment of new businesses and industries, the expansion of existing businesses and industries, development of new markets for agricultural, mineral, and other products, development and utilization of natural resources, and the attraction of new residents, businesses and industries."

Section 54-34-06 of the North Dakota Century Code, in specifying the duties of the director of the Commission, provides in part:

The director, under the supervision of the governor and subject to legislative appropriation, shall have the following powers and duties:

* * * *

2. To plan, execute and direct a program of publicity, research and industrial promotion which will
 - a. attract entrepreneurs, investment capital, and new residents;

- b. further the development and use of all the resources of this state;

* * * *

- d. assist in improving the business climate of North Dakota to encourage the growth and development of business and industry;

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- 4. To cooperate with departments and agencies of the federal government and of other states, and with departments, agencies, institutions and political subdivisions of this state and with associations, corporations and individuals upon such terms as may be agreed upon in providing programs of advertising, promotion, or research which will advance the economic development of the state;

* * * *

- 7. To do all things reasonably necessary and proper to realize the benefits and carry out the provisions of this chapter."

The Municipal Industrial Development Act of 1955 (chapter 40-57 of the North Dakota Century Code) would be of assistance to the Commission in performing its functions and duties as set forth above. The title of the Act as found in Chapter 280 of the 1955 Session Laws is:

AN ACT to promote industrial development within municipalities of this state; to authorize municipalities to acquire or construct, but not to operate, production facilities, together with all necessary appurtenances; to authorize the issuance and sale of revenue bonds for the purpose of this Act; and providing for separability of sections."

We believe the title sets forth the purpose of the Act. It is complementary to the Economic Development Commission Act. The need to have the constitutionality of the Act clarified prior to its use by the Commission and by a municipality is obvious. The Act forms a portion of the basis which may be used by the Commission in attracting new business and industry to this State, in development of new markets. We believe the understanding that the Commission would financially assist in the costs involved in the test case was proper under the circumstances.

It is, therefore, our opinion that the Economic Development Commission may, if they have an appropriation available, assist the city of Wahpeton in the court costs involved in this test case in view of the fact there was an understanding to that effect prior to the time the action arose.

HELGI JOHANNESON

Attorney General