

**OPINION
71-252**

April 6, 1971 (OPINION)

Mr. Fabian Noack

City Attorney

Carrington, ND

RE: Municipal Industrial Development Act - Projects -

Corporate Farming

This is in reply to your letter of March 24, 1971, with regard to a Municipal Industrial Development Project.

You inform us that the city pursuant to authority contained in Chapter 40-57 of the North Dakota Century Code has passed a preliminary resolution authorizing the issuance of Municipal Industrial Development Act bonds as a vehicle to finance the acquisition, improvements and extension of a cattle feeder lot facility. It is contemplated that following the city's acquisition of the necessary real estate, improvements, etc., that the said project would be leased to and operated by Custom Feeders, Inc., a corporation in the process of formation under North Dakota law. You enclose a copy of the proposed Articles of Incorporation of Custom Feeders, Inc.

Your further inform us that the real property to be so acquired by the City and leased out consists of approximately four hundred eighty acres of land and structures located thereon. This property lies approximately three miles north of the city, outside the city limits, but within the trade area of your city.

You further inform us that the real property is to be acquired from Butts Feed Lots, Inc. You enclosed a copy of the Articles of Incorporation of same with your letter. You mention that the stock of Custom Feeders, Inc., the proposed lessee-operator, is to be owned by the members of the Lloyd Butts family.

You further inform us at the present time that the Butts Feed Lots, Inc., presently owns approximately nineteen quarters of farmland in your city's area. You enclosed a copy of the warranty deed to them. At the current moment it appears from your letter that a major portion of the crops produced from said land is used for the feeding of cattle presently owned by the Butts Feed Lots, Inc., and the balance of the production of which is sold for cash.

Your questions are stated as:

- 1) Is a feedlot operation an authorized project under Chapter 40-57 of the North Dakota Century Code?
- 2) Is the city authorized to issue Municipal Industrial Development Act bonds in connection with the project

located outside the city limits.

- 3) Under the factual situation outlined above, is there any legal prohibition against the city issuing the municipal bonds and entering into the requisite lease-purchase agreement and related documents with Custom Feeders, Inc.?
- 4) Is there any liability upon the city directly or indirectly in the event of default of payments by the Lessee-Operator or in the event the bondholders would commence a foreclosure action?

We have deleted from the quotation of your questions the number of the city involved. You ask the further question of:

- 5) Would our opinion be different in light of the Coleharbor Stock Farm, Inc., case recently heard in Cass County?

Your first question is answered in the affirmative in view of the provisions of section 40-57-02 of the 1969 Supplement to the North Dakota Century Code, in that we feel that a "feedlot" processes agricultural products within the meaning of subsection 1 of this statute and that a "feedlot" constitutes an industry or business not prohibited by the constitution or laws of the state of North Dakota within the meaning of subsection 3 of this statute.

At this point we should perhaps elaborate to some extent by pointing out that our concept of a "feedlot" involves the necessary land, structures and buildings used for the sole purpose of finishing cattle for purposes of slaughter.

It does not include facilities appropriate or necessary to raise the necessary grain and other materials to feed the cattle or maintenance of breeding herds. While it is certainly conceivable that 480 acres of land could be used for strictly feedlot purposes, to the extent that a part of the facilities might be utilized for maintenance of breeding herds, raising of feed for the cattle, etc., a farming or ranching project would not be an "industrial" or "business" activity with the purposes of the Municipal Industrial Development Act. In this regard you might note the provision of section 40-57-20 of the North Dakota Century Code indicating in part that its purpose is to add to the volume of employment, particularly during these seasons when employment in farming and ranching is slack, the provisions of subsection 3 of section 40-57-02 heretofore considered limiting its application to industry or business not prohibited by law and the provisions of Chapter 10-06 of the North Dakota Century Code to the extent same prohibits corporate farming of this type in the state of North Dakota. We have, of course, previously issued opinions of this office to the effect that strictly "feedlot" operation does not constitute farming within the meaning of the corporate farming act.

In response to your second question our answer is yes, within the limits of the factual situation heretofore outlined.

In response to your third question our answer would also be in the affirmative, though we should mention that we have not examined the "requisite lease-purchase agreement" and "related documents." We

assume that by lease-purchase agreement you are referring to an arrangement where Custom-Feeders, Inc., would agree release and eventually purchase the facility, not the reverse situation where the city would be incurring an obligation other than the revenue bonds authorized by the Municipal Industrial Development Act. We assume further that such agreement and related documents are drawn strictly in accordance with all legal requirements therefor.

Our answer to your fourth question is in the negative though here also we are assuming that the contemplated arrangements involve no exercise of the city's authority beyond that given in the Municipal Industrial Development Act and that all documentation is drawn strictly in accordance with the Act.

In response to your fifth question our response to your first question might vary at such time as the Coleharbor Stock Farm, In., case becomes final or is upheld by the Supreme Court of this state, to the extent that under that decision there might be a broader base of operation, including to a greater extent grain raising, cattle breeding and other farming or ranching operations. We might point out in this regard, however, that if the resultant facility did not serve to add to the volume of employment during those seasons when employment in farming and ranching is slack, it would be difficult to consider same within the purposes of the Municipal Industrial Development Act. While in some senses of the word farming and ranching are both businesses and industry considering the general scope and purposes of the Municipal Industrial Development Act, there might well be some problems in carrying on farming and ranching types of operations thereunder. In this regard you might also consider House Bill 1124 introduced in the 1971 Session of the Legislative Assembly adding the following new language to the provisions of section 40-57.1-01 of the North Dakota Century Code:

" * * * The legislative assembly further declare that it is its intent to encourage the establishment of additional farms and ranches in this state, and that such agricultural enterprise shall be eligible for the tax exemptions provided by this chapter."

This bill passed the House, then was amended by the Senate and then failed to pass in the Senate according to our latest bill status report. While same is not necessarily determinative of the issues you present it would at least indicate that its sponsors construed the tax exemption statutes as not including farming and ranching operations and that the Legislative Assembly did not choose to assure farming and ranching operations of the benefit of industrial development tax exemptions.

We hope the within and foregoing will be sufficient for your purposes.

HELGI JOHANNESON

Attorney General