

**2015 HOUSE POLITICAL SUBDIVISIONS**

**HB 1376**

# 2015 HOUSE STANDING COMMITTEE MINUTES

## Political Subdivisions Committee

Prairie Room, State Capitol

HB 1376

2/12/2015

23761

☐ Subcommittee

☐ Conference Committee

*Ammonia Muscia*

### Explanation or reason for introduction of bill/resolution:

Relating to county and city authority to donate funds to a nonprofit health care facility within its jurisdiction.

### Minutes:

Testimony 1, 2, 3

Chairman Klemin: Opened hearing on HB 1376

Jerry Jurena: (Testimony 1)

Representative Strinden: Why is there that restriction to donate to non-profit hospitals?

Jurena: I am not sure.

Representative Anderson: Has there been any talk about a property tax going towards these non-profit places?

Jurena: There is no statutory authority to do that.

Representative Anderson: In Florida there is no arguing with doing that.

Jurena: There are hospital districts in the state that are provided for by some.

Representative Strinden: The counties and cities can do this now with the vote of the people and this bill would make it so that they don't have to vote.

Jurena: They can't just give money to the hospital if they have extra money.

Daniel Kelly: (Testimony 2) They can fund money through the creation of a county hospital district. The amount would be very minimal and some are willing to but they are excluded to do so.

Dossend: There are many restrictions and one is that the county can't use the law to provide for a religious hospital even if it is the only one available.

Representative Koppelman: Is that prohibition somewhere else in law?

Dossend: What we are referring to this is not matter of repeal this would be opening another option; the option that is available to create hospital districts is another code. If you want to repeal that in sectarian something we can discuss that another time.

Representative Kelsh: To make it clear, would this bill make it legal for a county or city to donate to a religious hospital?

Dossend: It is my understanding yes.

Darold Bertsch: (Testimony 3)

Dwaish Hehr: We experienced this in our last budgeting. They approached us and before we finalized the budget to participate in their project. We had a line item in the budget and through the budget process, before we finalized it, we received advice from the state attorney general that we could but we shouldn't donate. We took the money out of the budget but in supporting this we have one hospital in our county and it is quite a distance to transport them somewhere else. It is a huge employment base in our county and I want to make it easier for counties, if they have the needs to put the money towards project needs if they have the money.

Representative Koppelman: The attorney general said that he didn't believe that, that county commission could make indirectly make a donation to the hospital through the local hospital district. There are ways to do that and were you advised that there are ways to this if you set up a district or work through a district?

Dwaish: We don't have a district. We support others.

Representative Zubke: Move a do pass

Representative Kelsh: Second

Representative Koppelman: How does this work?

Chairman Klemin: There are provisions for creating a county hospital district but they resulted in minimal amounts that could be donated. They don't get much out of that.

Representative Kretschmar: My County established a hospital and passed at 80%. This would help my counties.

A Roll Call Vote Was Taken: Yes 13, No 1, Absent 0

Motion Carries

Representative Kretschmar will carry the bill

Date: 2/12/2019  
Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1376

House Political Subdivisions Committee

☐ Subcommittee ☐ Conference Committee

Amendment LC# or Description: \_\_\_\_\_

Recommendation: ☐ Adopt Amendment  
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☐ As Amended ☐ Rerefer to Appropriations  
Other Actions: ☐ Reconsider ☐ \_\_\_\_\_

Motion Made By Zubke Seconded By Kelsh

Representative	Yes	No	Representative	Yes	No
Chairman Lawrence R. Klemin	X		Rep. Pamela Anderson	X	
Vice Chair Patrick R. Hatlestad	X		Rep. Jerry Kelsh	X	
Rep. Thomas Beadle	X		Rep. Kylie Oversen	X	
Rep. Rich S. Becker	X		Rep. Marie Strinden	X	
Rep. Matthew M. Klein	X				
Rep. Kim Koppelman	X				
Rep. William E. Kretschmar	X				
Rep. Andrew G. Maragos	X				
Rep. Nathan Toman		X			
Rep. Denton Zubke	X				

Total (Yes) 13 No 1

Absent 0

Floor Assignment Kretschmar

If the vote is on an amendment, briefly indicate intent:

motion carried

**REPORT OF STANDING COMMITTEE**

**HB 1376: Political Subdivisions Committee (Rep. Klemin, Chairman)** recommends **DO PASS** (13 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). HB 1376 was placed on the Eleventh order on the calendar.

**2015 SENATE POLITICAL SUBDIVISIONS**

**HB 1376**

# 2015 SENATE STANDING COMMITTEE MINUTES

## Political Subdivisions Committee

Red River Room, State Capitol

HB 1376

3/20/2015

Job Number 25202

☐ Subcommittee

☐ Conference Committee



### Explanation or reason for introduction of bill/resolution:

Relating to county and city authority to donate funds to a nonprofit health care facility within its jurisdiction

### Minutes:

Written testimony # 1 Jerry Jurena

**Chairman Burckhard** opened the committee for a hearing on HB 1376. All senators were present.

**Jerry Jurena**, President of the North Dakota Hospital Association (1:24-3:37) in support of HB 1376 and as for a do pass on this bill. (#1)

**Senator Judy Lee** As you probably know we've just considered a bill in Human Services that permits this not to be included as part of the property determination for long term care facilities in Bowman, Richardson, and Watford City. We haven't voted on that on the floor. This would tie in with it beautifully. Do you need, or is there anything that as far as your rate is setting because that is affecting the long term care/basic care side that would mean that maybe long term care facilities and basic care facilities should also be considered in this enabling legislation because we're looking at having a sales tax for example that might benefit a local medical facility. Correct?

**Jerry Jurena** Right. **Senator Judy Lee** So it seems to me and maybe Mr. Traynor knows that Shelly Peterson is the person we want to ask this question. But if you do know please tell me if you see this also applying appropriately for a continuum of care kind of facility that could be health care as well as basic care, skilled care.

**Jerry Jurena** I honestly have to tell you that I forgot all about that and didn't think about the long term care facilities out there that would also be remodeling. I know that with Shelly was looking for was any funds that were coming in with a tax or a mill levy not to off-set their rates. This is a little different where were if the county or city wanted to come in and just donate money to the nursing home, I would have no problem with that addition to the bill.

**Senator Anderson** It seems to me that with a hospital the rates are more Medicare rates than they are Medicaid rates, would I be correct on that?

**Jerry Jurena** Yes that is true. **Senator Anderson** It might be that if the Medicare cost report no matter what we do here wouldn't let us exclude that money that came into the hospital, do you have a sense of that?

**Jerry Jurena** The reimbursement to a hospital from Medicare is usually above the 50% level and outside of two hospitals that we have, most of the Medicaid reimbursement to hospitals is in that single digits 6-8% at the lowest to probably almost 20%. So it's a very different disparity than what the nursing homes have and I am not sure that I have an answer.

**Senator Anderson** Does Medicaid pay you based on your Medicare cost report calculations or does it have a separate process for calculating the reimbursement to the hospital?

**Jerry Jurena** Yes, when the cost report is completed we do a Medicare cost report and then the state uses the Medicare cost report for Medicaid.

**Senator Grabinger** Maybe I am not following this right. We just built a Regional Medical Center and they went through a fund raising campaign and many people donated and this picture and room is dedicated, is that what we're talking about here in allowing the city and county to possibly make a similar donation? Is that what we're talking about?

**Jerry Jurena** Yes it is. Case examples would be when Crosby redid their hospital several years ago, and they went to the county and said would you donate and the county said yes. While then this city attorney or state's attorney asked the Attorney General for an opinion and they said there is some specific language that prohibits you from doing this. The language was kind to aside until Hazen and Watford City started to remodel. They went to the counties and I am not sure, but Hazens', county said we would donate \$50,000 to the remodeling of the ER in the hospital. This came back up again is they could not donate to the facility.

**Senator John Grabinger** Our city used to give donations to various groups until I got on there and I fought it tooth and nail, because we were taking taxpayer money from people and we're were turning around being like a charitable organization and giving it away. I thought it was totally inappropriate for us to ask people to pay taxes so that we could turn around and give their money away. Essentially that is what we are doing here then. If there allowed to put it to a vote in a sales tax or something and the money is earmarked for this purpose, I could see that differently. The people have the ability to weigh in, but us allowing them to give donations of taxpayer money I struggle with that for that reason.

**Jerry Jurena** I understand what you're saying. It is at the discretion of the city or the county to do this. It isn't that they have to do it, but I understand where you're coming from saying that this is taxpayers' money and there should be some community or city authorization for that. Again, the city commissioners, county commissioners are all elected, I mean so I guess it's up to the cities and the counties and at their discretion at what they want to do.



**Senator Dotzenrod** Didn't they in Divide County didn't they put it on the ballot and indicate that it was for the nursing home or the hospital I mean. When they had their tax that went on I thought that was part of the understanding, it was part of the ballot measure that went in front of the voters and be for that purpose.

**Jerry Jurena** Yes, I think when they were told that they couldn't get any donations from the city they went back to the city, for a tax levy. They do have a tax levy that was voted on.

**Senator Bekkedahl** I happen to own farmland in Divide County, I pay a property tax assessment to that hospital in Crosby, it's not even by the county, and they also have a sales tax as the citizens of Crosby dedicated those facilities, is that correct Jerry?

**Jerry Jurena** Yes. **Senator Bekkedahl** So they have some funding means there? My question to Jerry as I am reading the letter opinion here from the Attorney General's office, here is the last paragraph. " thus it is my further opinion that a county commission may not indirectly contribute funds to hospitals using a pass through donation to a hospital district to finance the construction of an affiliated clinic, absent a statute permitting such a donation", which is what your bill is attempting to do. My question is cause we dealt with this on the skilled nursing home side, if the city or the county gives any funds to a hospital foundation is that allowed under this letter of opinion which doesn't directly say foundation?

**Jerry Jurena** I am not sure I can answer that one for you. A number of hospitals do have a hospital foundation it is under the auspices of the hospital so anything that would come in to the foundation would be part of the hospital. But I am not sure how?

**Senator Bekkedahl** In a discussion of a bill we just talked about in the Senate relative to the population of 12, 500 remember that discussion, and I questioned whether that and that was for the 3 institutions that Senator Lee talked about. I questioned whether it would displace other areas such as mine which had a population of about 12, 5000. I was told because our city, our economic development fund in our city which is a cities sales tax has in the past given donations to our hospital and to our nursing home for major construction projects, of \$50,000. It wasn't \$100,000, but \$50,000. I was told that as long as we can still continue to do that as long as we are giving it to a foundation under this legislation we already looked at and we didn't need the legislation to change that threshold then. I wondered how that ties in with this.

**Jerry Jurena** I don't have an answer.

**Chairman Burckhard** Jerry there is a property tax reform tax force that was formed and proposed legislation SB 2144, and I see that Senator Dotzenrod is one of the sponsors for this bill. On page 25 of the 86 pages, it talks about Section 23-1801 Hospital Association Authorized county tax levy and aid election. It says the association may apply to the Board of County Commissioners of the County for a grant to aid in the erection or operation of a non-sectarian county hospital. Are you familiar with that?

**Jerry Jurena** No I am not.

**Chairman Burckhard** Would that be part of the solution, would that be what you're looking for?

**Jerry Jurena** A tax is an on-going process where the community would vote for a 1% sales tax or a mill levy that would be on-going, this is more of a one- time gift from the county or the city.

**Chairman Burckhard** In Minot, we have the Magic Fund which is a 1% sales tax. Actually there is two, 1% sales tax, and part of one of those pennies goes for community development and they would contribute to a project like this from that and not from a county or city funds. So it's tax funds from the folks. This is new to me, or this is something sensitive I guess.

**Senator Dotzenrod** 2144 that is the Governor's Task Force Bill and it is about 87 pages long and it really covers every mill levy that we have in the state. Really that bill has more to do with reorganizing the current system. I think that there probably is no significance substantive change in the law, in 2144 to what is current law. It makes some changes of any mill levies that are permanent, forever mill levies are probably amended in that bill so that they have an expiration date and have to be renewed, some of that goes on throughout the bill. But basically that bill is not making any large scale or new mills that aren't on the books so I am going to guess that section. There were only two legislators that developed the bill. That 87 pages if go through there it's primarily reorganizing the way that the mill levies can be categorized and capped and the counties like it. They have some latitude to move money within categories from one mill levy to another so they can manage their money better. So I am going to guess that whatever section you've got there, I don't think it will be significant change from current law.

**Jerry Jurena** When I was in Rugby we have about every 3-5 years we'd go to the city and ask for ½% point of the sales tax that would be devoted to the hospital for operations. What we're talking about here is we're getting into a new construction project and I want to remodel the ER or the hospital and just with the county and city be a participant.

**Terry Traynor** Association of Counties (18:41-21:54) I think it's been covered in parts and pieces but maybe to put it all in context the Attorney's General opinion that has been talked about. He cites the Constitution that government cannot give money to anyone unless its authorized in state law. There is multiple ways already in state law that hospital support can be provided. For counties its primarily the hospital district which is created with a taxing authority established; a hospital authority which can or doesn't have to have taxing attached to it. You can create a hospital authority for the sole purpose of allowing your county to donate or to grant money as well which isn't tied to a specific levy amount. Both of those the district and the authority require the citizens to approve that process. The one policy change I think that you'll see in 2144, in that section is when the district and the hospital authority were created they were primarily for building and equipment. The idea was to help establish a hospital. 2144, expands a hospital authority language to allow for support of operation and I think that is significant in that. The third way and I think this is where you see it more often in cities, is really Home Rule. By Home Rule the county or the city has the ability to take control of their finances above and beyond what state law would limit and if the citizens have granted that through ordinance authority or whatever to the

county the county could then pass an ordinance probably subject to referral assuming that is what in their Home Rule charter that would authorize them to give money to anything actually. But again that's a vote of the people. So, under current law, statutorily structured counties cannot give money to a hospital, I think that is clear; but under current law by going to a vote of the people, either for Hospital Authority or Home Rule they could grant money and with a Hospital District they could levy money. I hope that clarifies where we are at.

**Senator Anderson** Actually probably the old hospital authority the counties maybe could run their own hospital under that authority. We hear a lot about county hospitals across the country, we don't have any in North Dakota.

**Terry Traynor** I've wondered about that myself too, but I don't really see that providing the authority to run a hospital. But you may be right. That may have been some of the thinking there but it seems more of a mechanism to support nonsectarian hospital is how they say it there, basically a non-profit hospital.

**Senator Anderson** The only way that the county or the city could donate money to the hospital this legislation and then that gives them the authority should they choose to give them the money?

**Terry Traynor** Unless they said the citizens approve it. Right now you can do it, as long as someone does the light work as they have done in Divide county to get the citizens on board.

**Senator Judy Lee** We heard the differentiation really isn't those other ways of doing it would probably be a more long term support kind of thing which is different from what Mr. Jurena is describing here which would be perhaps a one time or unscheduled contribution. So, do you see any differentiation there?

**Terry Traynor** I think the Hospital Authority is really a two part thing. You can create a Hospital Authority for the sole purpose of granting money at times of need or periodically or annually or whatever. As well as establishing it for the purposes of levying a specific tax, so that's sort of an either or situation. At least as how I read it. There is only one I believe in the state that is operating as an authority. There are several that are operating as hospital districts.

**Senator Judy Lee** Can you tell us who they are at least the authority? **Terry Traynor** Is it Towner I think, then Divide, Emmons, McIntosh are districts.

**Senator Anderson** We don't have a county wide hospital but we have a hospital district that is established by a description and that supports the Turtle Lake hospital with tax money.

**Senator Judy Lee** Since Shelly Peterson came in, can I ask her to answer that question I had about long term care facilities?

**Shelly Peterson** Long Term Care Association. We've been tracking this legislation as some of our members have indicated they thought they would benefit from it too. I don't have the current bill in front of me. There is legislation that just passed the Senate and already passed the House, HB 1277 and that one was one that we were really hoping to get approved. You did approve it. The way we had interpreted this as I am looking at this bill now, is that the vast majority of all of our nursing homes as well as basic care and assisted living are non-profit so we thought the way it's written that they too would also benefit potentially if they were given anything from their political subdivision that they would be covered in this. This just refers to non-profit health care facilities.

**Senator Judy Lee** health care facilities would be included **Shelly Peterson** Yes. That would be my understanding.

**Chairman Burckhard** closed the hearing on HB 1376.

### **Committee Discussion**

**Senator Judy Lee** I absolutely agree with Senator Grabinger about not giving to some of the causes that you saw, the traditional fund raising kinds of things and I am sure the constituents are grateful that we put the kibosh on that. But I do see this as being something a bit different because my Dad was involved with the hospital board in Grafton for many years and raising money to keep the hospital open and all that kind of stuff. The community is fully behind it. I don't know that the community itself as a city has ever talked about making a donation but I personally don't have any aversion to enabling a city or a county to look at a monetary contribution to a building or remodeling project. I think that again rather than micromanaging our other elected officials, they should have that option if it's something that is critically important and with the cost of construction and remodeling the way they are I think any participation that keeps the county and city functioning at the best level it can is worth at least our consideration.

**Senator Grabinger** In response to Senator's Lees comments I would say certainly they have the opportunity now. We heard Mr. Traynor give an explanation of how they could do it, they can create the authority and go through the process. That way it brings it to the people and the people can weigh in on it rather than just 5 people sitting at a table deciding to spend their taxpayers money in that way.

**Senator Judy Lee** If the city held a public hearing and the public was invited to participate and discuss whether or not it was important just as a community informational thing; that would be a whole lot less work than putting something on the ballot and then informing people about it. But I am just asking if that would be something that would suit you or would you just rather only have an elected taxing district or taxing authority, hospital district, or hospital authority?

**Senator John Grabinger** I think there is a process in place in on how to do this. That is what Mr. Traynor explained and I think they can use those processes if they want to create a new one. You have a point they can come to a public meeting, come to the council meeting or commission meeting for that matter and state their objection if somebody has an objection. Certainly! But I think if you're going to do this, you do it properly and set it up so

the people are aware of what that tax money is being collected for. You don't just arbitrarily decide to give it away.

**Senator Dotzenrod** It seems to me that there really kind of two difference sets of circumstances here that we are talking about. One is the idea that a subdivision, a county would have obligated itself to a long term commitment of providing a revenue stream that is dedicated that was sort of perpetual. It was on the sale tax and in that case it seems to me the requirement we have in current law, that they go to the voters and get permission that is totally appropriate. What I see in this is something at least it doesn't really say it here, but I am looking at this as sort of a one-time capital construction drive to put together the money to do a renovation. I am thinking of this as not of what that former category would be; although it doesn't really by itself I don't think put those limits in place. I suppose someone could this an interpret it that you could go to the county and you could ask for a dedication of certain commitment every year then and ask them if they could just use this law, this provision and say would you be willing to give us \$20,000, \$50,000 per year from your budget and make that commitment long term which I don't think in my way of thinking is really what this is designed to do. Cause there is, as Senator Grabinger mentioned there is that process there for that long term commitment. This I am viewing as something that this would come in and they have got a project of some kind that they are trying to raise money for you to get it, renovate or maybe build an addition or something where their raising some money and they want a one- time donation. This doesn't really say that a one-time donation; or a short term versus long term so, I am not sure if we are creating a little ambiguity here for that person reading the law. Maybe I am the only person that is making that distinction between this long- term commitment, that which we already have in, and it requires voter approval and how I am reading this. I am okay with this, if my thinking on this is correct that this is really kind of separate matter from the provisions we have right now for this long term commitment. I am looking at this as being kind a single donation.

**Senator Anderson** I will move a do pass on 1376.

**2<sup>nd</sup> Senator Judy Lee**

### **Committee Discussion**

**Senator Judy Lee** The other thing that occurred to me as we were talking about having the election and I absolutely think that is a very important part those long standing contributions and I come from the same perspective as Senator Dotzenrod. The cost of an election is a factor here too or the delay that might take place if the issues that we put on the ballot at the next election just because there is some delay time with that, it sometimes is important depending when financing is approved or available for a project. Yes, it takes time to plan these things. So, I don't know if we want to do something that limits it in some way. We can talk about that, but I see it as a one-shot deal than to have the cost of an election for something that would be a single contribution seems redundant, bad use of money there too.

**Senator Anderson** This is a little broader here than just a hospital. It says a health care facility and what comes to mind is I think of New England. New England has a little rented space where they have a clinic and the providers come to visit. Now should New England want to donate money to a clinic to have a new building or buy an old building or whatever,

this would give them the option to do that. There wouldn't be a whole lot of money that would be necessary to make that happen, but it would give that city a way to do that without going through all the falderal. Of course I don't think the city can create a hospital district that we are talking about here, but this is for more than just hospitals. It is other facilities, its nursing home said it might affect them or clinics or whatever. Of course the Crosby opinion was actually a clinic that they were looking at, it wasn't a hospital; it was a clinic which would fall under the hospital district thing unless the hospital also owned the clinic.

**Senator Dotzenrod** I am thinking if we were to pass this and it became law we should expect that were going to see counties around the state as a result of this get significant amount of traffic at their door. Most of these facilities are sat some degree having some troubles trying to get everybody paid and it's not a very high paying jobs and this is tough to keep staff and there's a lot of issues that I can see where they have significant financial needs. It is a tough business and so I can see where there is a need for revenue and I can see where our counties are going to have to deal with a number of requests I am quite sure.

**Chairman Burckhard** Do you think they will have workforce issues with these facilities? We've got workforce issues all over the place. I am a little nervous about this bill myself, I just don't know if it's the right thing to do.

**Senator Judy Lee** Just thinking what Senator Dotzenrod just said too, it seems to me that if the facilities are coming and it's an operation cost issue, maybe that is the difference here. Operating cost issue that really should be a time when they look at developing a Hospital District because it then would be an on-going thing. It is a capital project maybe that is the difference. I understand the reservations and I am not trying to give any taxpayer money away here in an inappropriate way. But I think there's a difference in the use but we don't want to.

**Chairman Burckhard** It seemed awfully wide open. It was not very specific whether it is for operating costs or for bricks and motor.

**Senator Judy Lee** I realize there is a motion on the floor but would you be comfortable with an amendment that limited it to capital projects or one time capital project or something like that?

**Chairman Burckhard** I think it should have some kind of more definition to it. It seems like it is awfully wide open. I don't know why it should be so simple and so all-encompassing from my perspective.

**Senator Grabinger** it might be with an amendment like Senator Lee suggested. At least that way they're going to have a discussion on it and the people will weigh in of course if it's a one-time capital improvement. Well the hospital is asking for \$5,000 let's give them \$5000.

**Senator Judy Lee** Procedurally I will withdraw my 2<sup>nd</sup>. Senator Anderson replied I will withdraw my motion.



**Senator Judy Lee** I will amend 1376 to say, "to apply to capital improvement projects". There has to be a years' limit then Senator Grabinger, a time frame difference because we can't say forever. So, do you need it to be more restrictive than just capital improvement project? Do you need a time limit too?

**Senator Grabinger** I guess not because at least that way they are going to have a discussion. They came back to the well too many times.

**Senator Dotzenrod** I am just thinking that is you use the words "a capital construction project" rather than capital construction projects, if you just said "a capital construction project" I think that might by itself provide have some legal meaning.

**Chairman Burckhard** It seems unusual to me that it made it this far and such a simple wide open verbiage. Is nobody else concerned about it but us?

**Senator Judy Lee** It is the wisdom of the Senate.

**Chairman Burckhard** we have a motion on the amendment **Senator Bekkedahl 2<sup>nd</sup> the amendment**

**Senator Dotzenrod** Have we selected our words here carefully or are we kind of got a general idea?

**Senator Judy Lee** "a capital improvement project"

**Senator Dotzenrod** I don't know how the others have, but I have scratched out here is "to expend county funds, *for use in a capital construction project* to a non-profit. Now maybe that is not the right place.

**Senator Bekkedahl** I did it a little bit differently, because I thought the word donation should be primarily so I put *to expend county funds as a donation, for a capital improvement project*.

**Senator Judy Lee** That is my amendment that Senator Bekkedahl fixed up better.

**Roll call vote 6-0-0** amendment passes

**Senator Bekkedahl** That would both extend to both Section 1 and Section 2 amendment improvements.

**Chairman Burckhard** motion on the amended bill

**Senator Bekkedahl** I would move a do pass on HB 1376 as amended  
**2<sup>nd</sup> Senator Dotzenrod**

Roll call vote 4-2-0 motion passes

Carrier: Senator Judy Lee

March 20, 2015

3/20/15  
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PROPOSED AMENDMENTS TO HOUSE BILL NO. 1376

Page 1, line 7, after "donation" insert "for a capital improvement project"

Page 1, line 11, after "donation" insert "for a capital improvement project"

Renumber accordingly



Date: 3.20.15  
Roll Call Vote: 1

**2015 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1376**

Senate Political Subdivisions Committee

☐ Subcommittee

Amendment LC# or Description: 15.0849.01001

Recommendation: ☒ Adopt Amendment  
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☐ As Amended ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar  
Other Actions: ☐ Reconsider ☐ \_\_\_\_\_

Motion Made By Sen. Judy Lee Seconded By Sen. Bekkedahl

Senators	Yes	No	Senators	Yes	No
Chairman Burckhard	X				
Senator Anderson	X		Senator Dotzenrod	X	
Senator Bekkedahl	X		Senator Grabinger	X	
Senator Judy Lee	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

Date: 3.20.15  
Roll Call Vote: 2

**2015 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1376**

Senate Political Subdivisions Committee

☐ Subcommittee

Amendment LC# or Description: 15.0849.01001

Recommendation: ☐ Adopt Amendment  
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☒ As Amended ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar  
Other Actions: ☐ Reconsider ☐ \_\_\_\_\_

Motion Made By Sen. Bekkedahl Seconded By Sen. Dotzenrod

Senators	Yes	No	Senators	Yes	No
Chairman Burckhard		X			
Senator Anderson	X		Senator Dotzenrod	X	
Senator Bekkedahl	X		Senator Grabinger		X
Senator Judy Lee	X				

Total (Yes) 4 No 2

Absent 0

Floor Assignment Sen. Judy Lee

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1376: Political Subdivisions Committee (Sen. Burckhard, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HB 1376 was placed on the Sixth order on the calendar.

Page 1, line 7, after "donation" insert "for a capital improvement project"

Page 1, line 11, after "donation" insert "for a capital improvement project"

Renumber accordingly

**2015 TESTIMONY**

**HB 1376**

HB 1376

2/12/2015

1.1



North Dakota Hospital Association

**Vision**

*The North Dakota Hospital Association will take an active leadership role in major Healthcare issues.*

**Mission**

*The North Dakota Hospital Association exists to advance the health status of persons served by the membership.*

**Testimony: HB 1376  
County and City Authority to Donate Funds  
To a Nonprofit Health Care Facility  
House Political Subdivisions Committee  
February 12, 2015**

Good morning Chairman Klemin and Members of the House Political Subdivisions Committee. I am Jerry E. Jurena, President of the North Dakota Hospital Association. I am here today in support of HB 1376 and ask that you give this bill a **Do Pass**.

Hospitals have and are continuing to experience an increase in utilization of their emergency rooms and outpatient departments as a result of the oil boom. This increase in utilization is forcing a number of hospital boards to explore the expansion and/or remodeling of their existing hospitals. When a decision has been made to expand or remodel the local hospital the whole community usually gets involve. With any construction project hospital boards a long with the Administrator and community members work on fund raising. Fund raising usually includes community leaders, businesses and organizations. What hospital boards have experienced is if a county or city wants to participate they are restricted from donating to the project.

In a letter to the Divide County State's Attorney dated December 28, 2010 the North Dakota Attorney General issued an opinion stating: "A political subdivision may not make a donation to a private local hospital without specific statutory authority or a statute from which that authority can be necessarily implied." A Copy of the letter is attached.

After meeting with the Attorney General we were advised to meet with Legislative Council to draft appropriate language to give Counties and Cities the authority to make a donation to their local hospital if they desire.

I am before you today asking for your support in adopting this language in HB 1376 to provide counties and cities the authority to support improvements on their hospital with a donation.

With me today are two hospital Administrators that want to share their experiences with raising funds for their hospital.

I ask that you give this HB 1376 a **Do Pass**. Thank you.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Jerry E. Jurena". The signature is written in a cursive style with a large, looped initial "J".

Jerry E. Jurena, President  
North Dakota Hospital Association

LETTER OPINION  
2010-L-16

December 28, 2010

Ms. Elizabeth L. Pendlay  
Divide County State's Attorney  
PO Box 289  
Crosby, ND 58730-0289

Dear Ms. Pendlay:

Thank you for your letter requesting my opinion on whether a county commission may make a direct donation to a private hospital located within the county for the purpose of assisting in financing the construction of an affiliated clinic, or if that is not lawful, whether the county may indirectly make a donation for the clinic construction through the local hospital district. Consistent with prior guidance issued by this office, it is my opinion that the county commission may not make a direct contribution to a private hospital located in the county absent a statute authorizing such a donation. It is my further opinion that under the circumstances here, the county commission may not indirectly make a donation to the hospital through the local hospital district.

ANALYSIS

You indicate that the Divide County Commission would like to make a donation to a private hospital located within the county for the purpose of assisting with the costs of constructing a new affiliated clinic, but you question the legality of such a direct donation. You further ask that if a direct contribution to the hospital is not lawful, whether the county commission may make a contribution to the local hospital district with the funds being passed through to the hospital to finance its new clinic.

In your letter you refer to N.D. Const. art. X, § 18,<sup>1</sup> which is commonly called the anti-gift provision and to N.D. Const. art. VII, § 2.<sup>2</sup> You indicate that the donation might be justified

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<sup>1</sup> "The state, any county or city may make internal improvements and may engage in any industry, enterprise or business, not prohibited by article XX of the constitution, but neither the state nor any political subdivision thereof shall otherwise loan or give its credit or make donations to or in aid of any individual, association or corporation except for reasonable support of the poor, nor subscribe to or become the owner of capital stock in any association or corporation." N.D. Const. art. X, § 18.

<sup>2</sup> "The legislative assembly shall provide by law for the establishment and the government of all political subdivisions. Each political subdivision shall have and exercise such powers as provided by law." N.D. Const. art. VII, § 2.

John Fox

## LETTER OPINION 2010-L-16

December 28, 2010

Page 2

as reasonable support of the poor within the meaning of N.D. Const. art. X, § 18, but point out the lack of an authorizing statute as would seem to be required under N.D. Const. art. VII, § 2. Your first question was addressed in a prior opinion issued by this office<sup>3</sup> which concluded that:

[A] political subdivision may not make a donation to a private local hospital without specific statutory authority or a statute from which that authority can be necessarily implied. Even though a political subdivision may give donations for support of the poor without engaging in an industry, business, or enterprise under N.D. Const. art. X, § 18, N.D. Const. art. VII, § 2 requires specific statutory authority, or a statute from which that authority can be necessarily implied before such donations may be made. Merely construing a donation to a private hospital as one that can be attributed to be for the reasonable support of the poor is not a sufficient basis upon which to make such a donation.<sup>4</sup>

Consistent with the prior guidance issued by this office, it is my opinion that a county may not directly donate county funds to a local private hospital for the purpose of constructing a clinic, absent statutory authority for such a purpose.

You next ask whether the county commission may indirectly contribute funds to a local private hospital for financing the construction of a clinic by means of a pass-through donation to the local hospital district. Hospital districts are governed by N.D.C.C. ch. 23-30. A hospital district is defined as being a "district organized pursuant to section 23-30-02 for the purpose of supporting one or more of the following types of institutions: a

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<sup>3</sup> See N.D.A.G. Letter to Isakson (Sept. 29, 1992). This opinion and N.D.A.G. Letter to Belisle (Apr. 7, 1992) clarified an issue left open in N.D.A.G. Letter to Ratcliff (Nov. 15, 1991) that specific statutory authority (or necessarily implied authority) must exist in order for a county to loan its funds to a private hospital.

<sup>4</sup> Id.; see also N.D.A.G. 2003-L-51 ("While Article X, section 18 does allow a political subdivision to make donations in support of the poor, this office has previously opined that Article VII, section 2 of the North Dakota Constitution tempers that ability by requiring specific statutory authority before doing so. E.g., N.D.A.G. Letter to Larson (Sept. 25, 1987). Because that statutory authority does not currently exist, a city cannot make a donation in support of the poor."); N.D.A.G. 2000-L-153 ("[A]ny authority for a county to use money to make internal improvements, to make donations for the support of the poor, or to distribute money pursuant to an authorized industry, enterprise, or business, must be derived from state law passed by the North Dakota Legislature. . . . I am not aware of any state law that would authorize a county commission to donate money to the Devils Lake Improvement Association.").



## LETTER OPINION 2010-L-16

December 28, 2010

Page 3

hospital, an intermediate health care facility, and a nursing home,"<sup>5</sup> each of which provides inpatient care.<sup>6</sup>

There is no specific provision in N.D.C.C. ch. 23-30 that permits a hospital district to support a clinic associated with a community hospital. The term "clinic" is not defined in chapter 23-30 and will therefore be given its plain ordinary meaning.<sup>7</sup> "Clinic"<sup>8</sup> means "[a] medical establishment run by several specialists . . . that deals chiefly with outpatients."<sup>9</sup> Based on its plain meaning, a clinic does not meet the definition of a hospital, intermediate health care facility or nursing home as set out in the pertinent statutory definitions.<sup>10</sup> Thus, it is questionable whether a hospital district has authority to accept funds for the purpose of supporting a clinic, as opposed to a hospital, intermediate care facility, or nursing home. When the Legislative Assembly has authorized tax levies to support community clinics, the Legislature has given express authority for that support.<sup>11</sup>

While a hospital district does have the apparent authority to accept donations and contributions, nothing in N.D.C.C. ch. 23-30 explicitly permits a county to make donations or contributions to a hospital district. Even if I were to conclude that a hospital-based clinic came within the definition of a hospital for the purposes of chapter 23-30, the mechanism for the support of a hospital district is not a donation. Rather, this support structure comes from the authority of the board of directors of the hospital district to incur indebtedness on behalf of the hospital district and to certify the probable expense for operating the hospital district to the county auditor for the purpose of levying a tax for support of the hospital district both as authorized by chapter 23-30.<sup>12</sup>

Moreover, "[T]he law does not permit by indirection what cannot be accomplished directly."<sup>13</sup> As I previously noted in an analogous context:

<sup>5</sup> N.D.C.C. § 23-30-01(2).

<sup>6</sup> "Inpatient" means a patient who has been admitted to a medical institution as an inpatient . . . and who (1) [r]eceives room, board and professional services in the institution for a 24 hour period or longer." 42 C.F.R. § 440.2(a); "[i]ntermediate care facility" or "ICF/MR services" means "those items and services furnished in an intermediate care facility for the mentally retarded . . . ." 42 C.F.R. § 440.150.

<sup>7</sup> N.D.C.C. § 1-02-02.

<sup>8</sup> The American Heritage Dictionary 281 (2d coll. ed. 1991).

<sup>9</sup> "Outpatient" means "a patient of an organized medical facility, or distinct part of that facility who is expected by the facility to receive and who does receive professional services for less than a 24-hour period . . . ." 42 C.F.R. § 440.2(a).

<sup>10</sup> N.D.C.C. § 23-30-01(1), (3), and (4).

<sup>11</sup> See N.D.C.C. § 23-18.1-01 (authorizing the establishment of a county or community clinic association); and N.D.C.C. § 23-18-02 (authorizing an election to give county commissioners authority to levy a tax in aid of a county or community clinic).

<sup>12</sup> See N.D.C.C. § 23-30-06(5) and N.D.C.C. § 23-30-07.

<sup>13</sup> N.D.A.G. 2005-L-38, quoting Langenes v. Bullinger, 328 N.W.2d 241, 246 (N.D. 1982).

LETTER OPINION 2010-L-16  
December 28, 2010  
Page 4

Since it is beyond dispute that a county could not directly provide the proceeds of the tax levy to a local sectarian hospital, neither may it do so indirectly by means of channeling the tax levy proceeds through an entity recognized by the county as a nonprofit county hospital association, particularly where, as here, the sectarian local hospital would actually be using the equipment financed by the tax levy.<sup>14</sup>

Likewise, in this instance, since I have determined that absent statutory authority to do so, a county may not directly contribute to the financing of a clinic for a local hospital, neither may it do so indirectly by means of channeling the funds through a hospital district.

Thus, it is my further opinion that a county commission may not indirectly contribute funds to a hospital using a pass-through donation to a hospital district to finance the construction of an affiliated clinic, absent a statute permitting such a donation.

Sincerely,

Wayne Stenehjem  
Attorney General

jff/pg

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.<sup>15</sup>

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<sup>14</sup> N.D.A.G. 2005-L-38.

<sup>15</sup> See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).

**Testimony In Support of House Bill 1376**  
**House Political Subdivisions Committee**  
**February 12, 2015**

Chairman Klemin and members of the House Political Subdivisions Committee, I thank you for the opportunity to provide testimony in support of House Bill 1376. My name is Daniel Kelly, and I am the Chief Executive Officer of the McKenzie County Healthcare Systems, Inc. in Watford City, North Dakota.

The McKenzie County Healthcare Systems, Inc. consists of the 24 bed Critical Access Hospital, 47 bed Skilled Nursing Facility, 9 bed Basic Care Facility, 16 unit Assisted Living Facility, Rural Health Clinic and the Connie Wold Wellness Center.

When testifying in support of other initiatives requesting financial assistance, one question that comes from legislative committee members is "what skin in the game" does the local government have?

While our county and others in this state have an interest in providing support for their local healthcare system, Letter Opinion 2010-L-16 dated December 28, 2010 precludes counties from making a donation to the local hospital.

In that opinion, Attorney General Wayne Stenehjem states:

"Consistent with prior guidance issued by this office, it is my opinion that the county commission may not make a direct contribution to a private hospital located in the county absent a statute authorizing such a donation. It is my further opinion that under the circumstances here, the county commission may not indirectly make a donation to the hospital through the local hospital district."

It would seem to me that the simple language of House Bill 1376 provides the statutory language authorizing such a contribution as noted necessary by Attorney General Stenehjem.

Healthcare systems in general and the McKenzie County Healthcare Systems specifically are facing many operational and financial challenges. In addition many healthcare systems are looking to build or renovate their aged facilities that no longer meet life safety code standards. When offered, we need the ability to accept financial assistance from our local and county government.

I strongly urge the committee to approve House Bill 1376.

I would be happy to explain any of these items further or to answer any questions the committee may have.

Daniel Kelly, CEO

2.2

McKenzie County Healthcare Systems, Inc.  
516 North Main Street  
Watford City, North Dakota 58854  
(701) 842-3000  
Email: [dkelly@mchsnd.org](mailto:dkelly@mchsnd.org)

HB 1376  
2/12/2015  
3.1

**Testimony in Support of HB 1376**  
**House Political Subdivisions Committee**  
**Thursday February 12, 2015**

Chairman Klemin and members of the House Political Subdivisions Committee; good morning, I am Darrold Bertsch, the CEO of Sakakawea Medical Center in Hazen and I am the CEO of Coal Country Community Health Center in Beulah. I am here today to testify in support of HB 1376 and ask that you would recommend a do pass on this bill.

Sakakawea Medical Center is a Critical Access Hospital that owns and operates a Rural Health Clinic, Basic Care Services, Home Health and Hospice Services. Coal Country Community Health Center is a Federally Qualified Health Center that provides primary care and behavioral health services to the residents of Mercer, Oliver and Dunn counties.

Hospitals across the state, including our facility, are in the development and design stages of a construction project that will update their facilities in order to meet the demands of their communities and the changing environment of healthcare delivery. These facilities are working hard to raise local funds through foundations and capital campaigns to support the construction projects they are undertaking. Local county and city financial support of these projects is also vital to help make them a reality. This is exactly what we tried to do in our area, only to be told that counties are prohibited from providing financial support for local hospitals and clinics.

Additionally, as Chairman of the North Dakota Hospital Association, I am keenly aware that many of North Dakota's rural hospitals are challenged with generating enough revenue through operations to pay for salaries and other expenses that they incur. They are encouraged to seek financial support through other means, such as foundations, grants and local government in order to be able to continue to provide the healthcare services that local residents and visitors to the area expect. Passing this bill will allow those cities and counties who have the desire and means to do so, to financially support their local healthcare facilities.

As a private citizen, I think that accessibility to local healthcare services is vital to rural community residents and to their local economies. If financial support from a county or a city governmental entity is necessary to support

the availability of local healthcare services, I believe they should be given the flexibility and latitude to do so.

I am asking for your support of this bill to allow city and county governments who are able to do so, to support local healthcare services in their area. I ask that you give a do pass recommendation on HB 1376.

Thank you for allowing me the opportunity to share my testimony. I would be happy to answer any questions that you may have.

Respectfully,

Darrold Bertsch, CEO  
Sakakawea Medical Center, Hazen  
Coal Country Community Health Center, Beulah  
[dbertsch@smcnd.org](mailto:dbertsch@smcnd.org)  
Cell 701-880-1440



#### **Vision**

*The North Dakota Hospital Association will take an active leadership role in major Healthcare issues.*

#### **Mission**

*The North Dakota Hospital Association exists to advance the health status of persons served by the membership.*

*H.B. 1376  
3.20.15*

**Testimony: HB 1376  
County and City Authority to Donate Funds  
To a Nonprofit Health Care Facility  
Senate Political Subdivisions Committee  
March 20, 2015**

Good morning Chairman Burckhard and Members of the Senate Political Subdivisions Committee. I am Jerry E. Jurena, President of the North Dakota Hospital Association. I am here today in support of HB 1376 and ask that you give this bill a **Do Pass**.

Hospitals have had and are continuing to experience an increase in utilization of their emergency rooms and outpatient departments as a result of the oil boom. This increase in utilization is forcing a number of hospital boards to explore the expansion and/or remodeling of their existing hospitals. When a decision has been made to expand or remodel the local hospital the whole community usually gets involved. With any construction project hospital boards along with the Administrator and community members work on fund raising. Fund raising usually includes community leaders, businesses and organizations. What hospital boards have experienced is if a county or city wants to participate they are restricted from donating to the project.

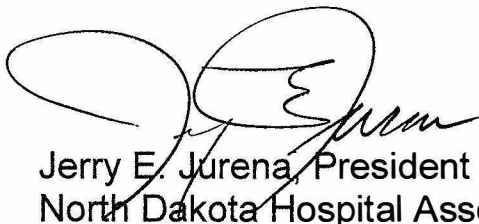
In a letter to the Divide County State's Attorney dated December 28, 2010 the North Dakota Attorney General issued an opinion stating: "A political subdivision may not make a donation to a private local hospital without specific statutory authority or a statute from which that authority can be necessarily implied." A Copy of the letter is attached.

After meeting with the Attorney General we were advised to meet with Legislative Council to draft appropriate language to give Counties and Cities the authority to make a donation to their local hospital if they desire.

I am before you today asking for your support in adopting the language that has been drafted in HB 1376. The language in HB 1376 will allow counties and cities the authority to support improvements to their hospital with a donation if they so choose.

I ask that you give this HB 1376 a **Do Pass**. Thank you.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Jerry E. Jurena". The signature is stylized with large, sweeping loops and a cursive script.

Jerry E. Jurena, President  
North Dakota Hospital Association



LETTER OPINION  
2010-L-16

December 28, 2010

Ms. Elizabeth L. Pendlay  
Divide County State's Attorney  
PO Box 289  
Crosby, ND 58730-0289

Dear Ms. Pendlay:

Thank you for your letter requesting my opinion on whether a county commission may make a direct donation to a private hospital located within the county for the purpose of assisting in financing the construction of an affiliated clinic, or if that is not lawful, whether the county may indirectly make a donation for the clinic construction through the local hospital district. Consistent with prior guidance issued by this office, it is my opinion that the county commission may not make a direct contribution to a private hospital located in the county absent a statute authorizing such a donation. It is my further opinion that under the circumstances here, the county commission may not indirectly make a donation to the hospital through the local hospital district.

ANALYSIS

You indicate that the Divide County Commission would like to make a donation to a private hospital located within the county for the purpose of assisting with the costs of constructing a new affiliated clinic, but you question the legality of such a direct donation. You further ask that if a direct contribution to the hospital is not lawful, whether the county commission may make a contribution to the local hospital district with the funds being passed through to the hospital to finance its new clinic.

In your letter you refer to N.D. Const. art. X, § 18,<sup>1</sup> which is commonly called the anti-gift provision and to N.D. Const. art. VII, § 2.<sup>2</sup> You indicate that the donation might be justified

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<sup>1</sup> "The state, any county or city may make internal improvements and may engage in any industry, enterprise or business, not prohibited by article XX of the constitution, but neither the state nor any political subdivision thereof shall otherwise loan or give its credit or make donations to or in aid of any individual, association or corporation except for reasonable support of the poor, nor subscribe to or become the owner of capital stock in any association or corporation." N.D. Const. art. X, § 18.

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John Fox

LETTER OPINION 2010-L-16  
December 28, 2010  
Page 2

as reasonable support of the poor within the meaning of N.D. Const. art. X, § 18, but point out the lack of an authorizing statute as would seem to be required under N.D. Const. art. VII, § 2. Your first question was addressed in a prior opinion issued by this office<sup>3</sup> which concluded that:

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Consistent with the prior guidance issued by this office, it is my opinion that a county may not directly donate county funds to a local private hospital for the purpose of constructing a clinic, absent statutory authority for such a purpose.

You next ask whether the county commission may indirectly contribute funds to a local private hospital for financing the construction of a clinic by means of a pass-through donation to the local hospital district. Hospital districts are governed by N.D.C.C. ch. 23-30. A hospital district is defined as being a "district organized pursuant to section 23-30-02 for the purpose of supporting one or more of the following types of institutions: a

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<sup>3</sup> See N.D.A.G. Letter to Isakson (Sept. 29, 1992). This opinion and N.D.A.G. Letter to Belisle (Apr. 7, 1992) clarified an issue left open in N.D.A.G. Letter to Ratcliff (Nov. 15, 1991) that specific statutory authority (or necessarily implied authority) must exist in order for a county to loan its funds to a private hospital.

<sup>4</sup> Id.; see also N.D.A.G. 2003-L-51 ("While Article X, section 18 does allow a political subdivision to make donations in support of the poor, this office has previously opined that Article VII, section 2 of the North Dakota Constitution tempers that ability by requiring specific statutory authority before doing so. E.g., N.D.A.G. Letter to Larson (Sept. 25, 1987). Because that statutory authority does not currently exist, a city cannot make a donation in support of the poor."); N.D.A.G. 2000-L-153 ("[A]ny authority for a county to use money to make internal improvements, to make donations for the support of the poor, or to distribute money pursuant to an authorized industry, enterprise, or business, must be derived from state law passed by the North Dakota Legislature. . . . I am not aware of any state law that would authorize a county commission to donate money to the Devils Lake Improvement Association.").

LETTER OPINION 2010-L-16

December 28, 2010

Page 3

hospital, an intermediate health care facility, and a nursing home,"<sup>5</sup> each of which provides inpatient care.<sup>6</sup>

There is no specific provision in N.D.C.C. ch. 23-30 that permits a hospital district to support a clinic associated with a community hospital. The term "clinic" is not defined in chapter 23-30 and will therefore be given its plain ordinary meaning.<sup>7</sup> "Clinic"<sup>8</sup> means "[a] medical establishment run by several specialists . . . that deals chiefly with outpatients."<sup>9</sup> Based on its plain meaning, a clinic does not meet the definition of a hospital, intermediate health care facility or nursing home as set out in the pertinent statutory definitions.<sup>10</sup> Thus, it is questionable whether a hospital district has authority to accept funds for the purpose of supporting a clinic, as opposed to a hospital, intermediate care facility, or nursing home. When the Legislative Assembly has authorized tax levies to support community clinics, the Legislature has given express authority for that support.<sup>11</sup>

While a hospital district does have the apparent authority to accept donations and contributions, nothing in N.D.C.C. ch. 23-30 explicitly permits a county to make donations or contributions to a hospital district. Even if I were to conclude that a hospital-based clinic came within the definition of a hospital for the purposes of chapter 23-30, the mechanism for the support of a hospital district is not a donation. Rather, this support structure comes from the authority of the board of directors of the hospital district to incur indebtedness on behalf of the hospital district and to certify the probable expense for operating the hospital district to the county auditor for the purpose of levying a tax for support of the hospital district both as authorized by chapter 23-30.<sup>12</sup>

Moreover, "[T]he law does not permit by indirection what cannot be accomplished directly."<sup>13</sup> As I previously noted in an analogous context:

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<sup>6</sup> "Inpatient" means a patient who has been admitted to a medical institution as an inpatient . . . and who (1) [r]eceives room, board and professional services in the institution for a 24 hour period or longer." 42 C.F.R. § 440.2(a); "[i]ntermediate care facility" or "ICF/MR services" means "those items and services furnished in an intermediate care facility for the mentally retarded . . . ." 42 C.F.R. § 440.150.

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<sup>11</sup> See N.D.C.C. § 23-18.1-01 (authorizing the establishment of a county or community clinic association); and N.D.C.C. § 23-18-02 (authorizing an election to give county commissioners authority to levy a tax in aid of a county or community clinic).

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## LETTER OPINION 2010-L-16

December 28, 2010

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Since it is beyond dispute that a county could not directly provide the proceeds of the tax levy to a local sectarian hospital, neither may it do so indirectly by means of channeling the tax levy proceeds through an entity recognized by the county as a nonprofit county hospital association, particularly where, as here, the sectarian local hospital would actually be using the equipment financed by the tax levy.<sup>14</sup>

Likewise, in this instance, since I have determined that absent statutory authority to do so, a county may not directly contribute to the financing of a clinic for a local hospital, neither may it do so indirectly by means of channeling the funds through a hospital district.

Thus, it is my further opinion that a county commission may not indirectly contribute funds to a hospital using a pass-through donation to a hospital district to finance the construction of an affiliated clinic, absent a statute permitting such a donation.

Sincerely,

Wayne Stenehjem  
Attorney General

jff/pg

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.<sup>15</sup>

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<sup>15</sup> See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).