

2013 HOUSE JUDICIARY

HCR 3048

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HCR 3048
DATE March 12, 2013
JOB 19767

Conference Committee

Carman Hicks

Explanation or reason for introduction of bill/resolution:

Concurrent resolution relating to statement of the public purpose of a tax, uniform assessment of taxes among classes of property, and state ownership of an industry, enterprise or business.

Minutes:

Testimony and handouts 1,2,3

Chairman Kim Koppelman: Opens the hearing on HCR 3048.

Rep. Streyle: Handout #1, see attached. Time on tape :45 to 3:37. Rep. Streyle introduced HCR 3048.

Rep. Lois Delmore: Are you adding this? Is this an amended part because I don't have a Section 16?

Rep. Streyle: If you look on page 1 line 20 says further defined in Section 16 or Article 1 I just printed that article for you.

Rep. Lois Delmore: Do you have a mechanism in here to provide notification to the public that the bill as in Section 1 why you collect and insuring public moneys are only going to be for the public purpose? Is there a way to tell people that?

Rep. Streyle: If this were to pass it would go on the ballot which will create more discussion. I not sure where you are going with notifying the public.

Vice Chairman Larry Klemin: Section 3 page 1 line 18 says shall state the public purpose of the tax. We have a lot of taxes on the books already and I don't know if they have a specific provision in those tax laws now that state the public purpose of the tax. If they don't, does this mean those provisions of law that relate to taxes will have to all be amended to state a public purpose of the tax in order to meet this Constitutional provision?

Rep. Streyle: I now understand where Rep. Delmore was going with the question. I'm not sure what would need to be done on that portion but this would be if you are collecting a property tax or a fire district tax what's the purpose of that tax. This is clarifying what the taxes are used for. Now there is a lot of economic development used by using someone else's taxes.

Vice Chairman Larry Klemin: It doesn't say every new law imposing a tax. It says every law.

Rep. Streyle: I can do research on that and get back to the committee.

Rep. Vicky Steiner: It looks like you are clarifying the Constitution language to update it, yet you think it's going to do something about Renaissance zone? Where is that in the bill that would change how economic developers would approach a Renaissance zone?

Rep. Streyle: The language contradicts itself in different sections of the Constitution. The public purpose for the tax I was just trying to use an example where you would have to clarify to the public what the purpose is. I used Renaissance as an example.

Vice Chairman Larry Klemin: On that same section the public purpose is a government function that serves all citizens of the state equally, how we would know that in practice? If taken literally we would have to say a citizen of Williston is treated the exactly the same for all taxes as a citizen of Wahpeton. Is that the intention?

Rep. Streyle: It isn't to take away any ability of local political subdivision to levy the taxes of what they need for that political subdivision. Citizens equal I see it in that particular community or that taxing district equally. Not from Fargo to Williston for example.

Vice Chairman Larry Klemin: It says all citizens of the state.

Rep. Streyle: That might need some tweaking. That is not the intent

Vice Chairman Larry Klemin: Your intention is to say that there is a tax levied by a city it has nothing to do with people in another part of the state?

Rep. Streyle: Yes.

Vice Chairman Larry Klemin: In that case then everybody in that area that is subject to that tax would have to be treated the same?

Rep. Streyle: Correct.

Rep. Kathy Hogan: If the state was to fund a project like the Devil's Lake water issues that might not be treated equally in terms of water funding state wide. Would that have an impact, would we have to fund all state governments equally?

Rep. Streyle: That is not the intent and it might need a little tweaking on the words there.

Vice Chairman Larry Klemin: Same sentence on page one, you talk about citizens are we talking about individually or corporate citizens?

Rep. Streyle: I view that as all the human bodies, citizens, not corporations which are owned by citizens too.

Vice Chairman Larry Klemin: So a business entity could be treated differently than an individual person under this provision?

Rep. Streyle: I don't think so, the corporations are owned by citizens.

Vice Chairman Larry Klemin: It says citizens of the state we have a lot of corporations that are foreign corporations for example that are technical citizens of another state. What about citizens of another state who are here can we treat them differently?

Rep. Streyle: That's not the intent. It would be just the citizens of the state.

Vice Chairman Larry Klemin: Maybe talk about citizens in the state instead citizens of the state.

Rep. Streyle: That would make sense.

Vice Chairman Larry Klemin: I don't want to be picky with the words but when we are talking about the Constitution and we tend to interpreted word by word sometimes.

Rep. Streyle: It's a good point.

Chairman Kim Koppelman: With regard to the purpose on the first page it's defining or seeking to further define a term normally terms are defined in statute, is there a reason you think this should be in the Constitution versus in the law?

Rep. Streyle: In Section 16 which defines the public purpose section.

Chairman Kim Koppelman: Is that bold type part of the current Section 16?

Rep. Streyle: Yes.

Chairman Kim Koppelman: Is there a definition of public purpose in the Century Code now?

Rep. Streyle: this is one of them here and I am not 100% sure additional ones.

Rep. Owens: Supports the bill and I don't have anything additional but will take questions.

Curly Haugland: Testimony #2 and handout #3, see attached. Time on tape 14:54 to 30:40. We are here because the courts have nullified the Constitution and hopefully we are trying to fix it. We are asking your assistance to get the wording as precise and correct as it can be.

Vice Chairman Larry Klemin: If this resolution and amendments are approved by voters is it your expectation that this will reverse the decision of the Supreme Court in those two cases, Haugland versus the state and Hail verses the state?

Curly Haugland: No, absolutely not. You can't look backwards this is looking forward. What we are saying the courts would no longer be able to cite case law like they have here because just as they have nullified their decisions the Constitution this intends to nullify residential cases. The courts would have to start over looking at the plain language of the law going forward.

Vice Chairman Larry Klemin: We would still have statutes relating to urban renewal and tax income financing.

Curly Haugland: The Legislature has a lot of work ahead of it. There is probably a hundred of Constitutional statues right now. My point is they are already unconstitutional if you give any credence to the argument that we are making here that the Constitution already prevents or prohibits the application of public money to private people.

Vice Chairman Larry Klemin: Supreme Court in those cases said those statues referred to were not unconstitutional. But in going forward then if there was another challenge to those statues and if this Constitutional amendment was approved is it your understanding that they would be unconstitutional?

Curly Haugland: Absolutely. An example what's going on now is under the urban renewal tax increment process that is in statute that in my view violates the Constitution because of this Uniform Tax business. What happens is a tax is assessed on the tax increment district but then proceeds from a large lot dedicated to improvements downtown. That property tax that's going to the improvements includes taxes for the school district which is about 60% of the tax burden on the home property in Bismarck which then doesn't get the tax. For instance if you had a community that had ten businesses and a school with ten classrooms if you exempt one of the businesses of those ten from paying taxes to the school district do you close one classroom? Of course you don't but the other nine businesses pay more to support the classrooms because the businesses that don't support the classrooms are exempted. The Constitution never did allow that if it was read clearly but it's been misconstrued, misinterpreted, and equal protections have been lost. Now going forward a tax must be levied for a public purpose. You asked earlier how that would change. You levy a tax it's for schools and it shows up on your property tax bill as the school levy, the park levy etc. If it's levied for schools it can only be spent for schools it can't be spent urban renewal.

Rep. Lois Delmore: If we look at Article 10 section 5 are you primarily addressing those commercial needs? Are there differences in the way ag. property is assessed or homes on the farm versus in the city? Are you needing to address all of those fairness issues?

Curly Haugland: Only to the extent that they are not being done correctly now. Again all we need here is change the words slightly so that we get away from previous court cases and the intention is all farm homes will be taxed the same, all commercial property taxed the same. In other words there is no such thing as exemptions, one commercial property can't be exempted while another one is.

Rep. Lois Delmore: There are some inequities between farm exemptions and there are living in the city that you need to address too?

Curly Haugland: No those are not in this bill.

Chairman Kim Koppelman: In section 5 the current Constitution says taxes shall be uniform upon the same class of property. Your wording would say taxes shall be assessed uniformly upon each class of property. Assessments are something that occurs when a tax assessor goes out and says this property is worth that much and taxes are applied accordingly. But the taxes are uniform then a political subdivision comes in and says that because this is a new piece of property we have a two year exemption that you are not going to pay taxes or a less amount the assessment is the same. I am wondering if your intent is going to achieve what you are aiming at because I think a court could read that and say the assessment is uniform but there is abatement.

Curly Haugland: If you really follow through with what I am saying there is no abatement anymore. There shouldn't be in the first place because that is where the taxes not uniformly assessed. The way the existing Constitution reads it says taxes shall be uniform on each class. How can it be uniform if one property is not paying and the other one is.

Chairman Kim Koppelman: that is why I think the original language gets to your goal more than your suggested language.

Curly Haugland: I understand that but if we don't restate this then the courts are going to go back and use the same precedent that has got us to where we are now. This is about educating the courts as well, about their responsibility to read these words carefully and to apply the law uniformly.

Chairman Kim Koppelman: We just had a bill here that dealt with military families and one area of the bill says that court may not consider a and b and c when it's doing x and y and x. We can through statute tell a court what it may or may not consider. The law has some authority and the courts are going to presume what the Legislature passes to be constitutional unless it is clearly conflicting with the Constitution. Don't you think some of the goals you are talking about could be accomplished through statute rather than an attempt to treat the Constitution which may or may not achieve what you are driving at?

Curly Haugland: I have been on this mission for 35 years and on the original panic growing North Dakota when the state was dying. So that was the beginning of planning of economic development at the state level. I testified in opposition to the Growing North Dakota bill at the time. The only thing I asked them to do set a bench mark so you know when you have exceeded when the job is completed. If you are not receiving a handout from the Government you are paying for it.

Chairman Kim Koppelman: Page 1 section 3 says no tax shall be levied except in pursuance of the law and every law imposing a tax shall state in your language would be the public purpose of the tax. How would that be applied in ND levies income tax and sales tax? How would it be possible statutorily to state everything that goes dollars could conceivably be used for when the tax is levied?

Curly Haugland: I want to call your attention to the original language, the original Constitution says no tax will be levied except for the pursuance of law and every law imposing a tax shall state distinctly the object of the same so that to mean the public purpose. Originally that language is intended to mean the same thing. In the days when public taxes had to be spent for public purpose. Now you will see the appropriation bill for the state of North Dakota will read for the general operation of the state. There is a statement of purpose in your tax bill. That carries on to cities and counties as well. This simply applies the public purpose test. You can't levy a tax that you know is not going for a public purpose.

Chairman Kim Koppelman: So if a tax were enacted with that kind of general language and someone were to come along and challenge it in court if it were for general purposes and they used it to build a grocery store that is where you feel some pressure would be brought to stop it.

Curly Haugland: Exactly, we brought that case as it brought several components in it that we could get to in one court case. We could get to whether it's constitutional to levy a tax for schools and give it to some private developer in downtown areas.

Chairman Kim Koppelman: You have talked about this part of the constitution as being an anticorruption section and I have never thought of it as corruption but thought of it as defining the proper role of government. We shouldn't be gifting money to individuals unless it is to support the poor and you continue to raise the issue of corruption do you have other evidence historically that was the purpose that there was corruption going on and they were trying to stop it.

Curly Haugland: The more expansive discussion of the railroad history talks about that because that is why that section was originally drafted in 1889. In the 1850's as the railroads were expanding it was a common practice for landowners and developers to get ahead of the track and stack out a claim and this is our town. They would then encourage railroads to come their way. Corruption by definition is when you use the power of tax which is taken by force of someone's money and give it to some other private person. The intentions are to prevent corruption in government.

Rep. Vicky Steiner: Why did you leave in the statement of intent the word enterprise when it looks like through your court cases you mentioned the word enterprise has been misused how you think it should be used? Are you going to stay with the word enterprise?

Curly Haugland: With the assurances that we have to public money for public purposes we don't want to restrain the state from engaging in any business industry or enterprise. Our intent is not to change the original meaning of the Constitution. But with the changes that we have incorporated here that will satisfy the courts that an economically development is not an enterprise because of what we did with the definition of public purpose

Rep. Vicky Steiner: Have you ever used economic development money?

Curly Haugland: I am proud to say I have never taken a nickel. Not a penny. I have been offered many times it's not the right thing to do.

Vice Chairman Larry Klemin: An example of the Renaissance zone statutes we have is it your expectation that if this was adopted our laws in the Renaissance zones would be unconstitutional?

Curly Haugland: My position it is unconstitutional already. There is a section of the Constitution that says taxes can't be forgiven by contract by definition these Renaissance zone the Legislature has delegated the authority to forgive state income taxes to city commissions.

Vice Chairman Larry Klemin: How about the Bank of ND what it does in various loans that it makes to farmers and others? They help buy down the interest rate on some loans for commercial and industrial uses, would those be unconstitutional?

Curly Haugland: Every loan that came up that had a buy down provision I voted against it. The bank gives away money to select recipients that's the unconstitutional part, that created the need for local political subdivisions get into criminal activity by matching it. Because it requires a local match.

Cal Klewin, representing Economic Development Association of ND: Time on tape 57:00 to 57:42. We have concerns HCR 3048 we need to take a look at this resolution to see that the ability for economic development can sustain itself in a fashion by using those tools that were put forth to sustain some of the communities in our state.

Keith Magnuson representing North Dakota League of Cities: Time on tape 58:55 to 1:01:08. Listening to the dialogue I want to take this back to HCR 3048 and urge you not to put something in the Constitution lightly. It seems like this session we have a lot of resolutions in both houses that are tax policy or other types of policy to be handled by the Legislature. I don't think this resolution is ready to be sent to the voters.

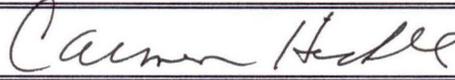
Chairman Kim Koppelman: Closes the hearing.

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HCR 3048
DATE March 18, 2013
JOB 20037

Conference Committee



Explanation or reason for introduction of bill/resolution:

Concurrent resolution relating to statement of the public purpose of a tax, uniform assessment of taxes among classes of property, and state ownership of an industry, enterprise or business.

Minutes:



Chairman Kim Koppelman: Opens for committee work on HCR 3048. This resolution deals with public purpose and the definition of that in the Constitution. There were some issues regarding lawsuits.

Rep. Vicky Steiner: I am going to resist this as I don't think it's going to do what they are trying to do. They are trying to make a point about whether you have economic development that funds certain businesses over another.

Chairman Kim Koppelman: It appears to say the same thing the Constitution already says. My understanding from the hearing was that they think this would preempt the case law that the courts are relaying on to make decisions. I am not sure the public would understand that because it is not real clear if you just read the resolution. I think passing a new statute if they want to that would be a better way because the Legislature is saying this is how this would be interpreted.

Rep. Lois Delmore: Made a motion for do not pass.

Rep. Gary Paur: Second the motion.

8-4-2

Rep. Bill Kretschmar: Will carry the resolution to the floor.

Date: 3-18-13
 Roll Call Vote #: 1

**2013 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. HR 3048**

House Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Delmore Seconded By Rep. Paur

| Representatives | Yes | No | Representatives | Yes | No |
|-------------------------------|-----|----|-------------------|-----|----|
| Chairman Kim Koppelman | / | | Rep. Lois Delmore | / | |
| Vice Chairman Lawrence Klemin | / | | Rep. Ben Hanson | | |
| Rep. Randy Boehning | | | Rep. Kathy Hogan | / | |
| Rep. Roger Brabandt | | / | | | |
| Rep. Karen Karls | / | | | | |
| Rep. William Kretschmar | / | | | | |
| Rep. Diane Larson | | / | | | |
| Rep. Andrew Maragos | | / | | | |
| Rep. Gary Paur | / | | | | |
| Rep. Vicky Steiner | / | | | | |
| Rep. Nathan Toman | | / | | | |
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Total (Yes) 8 No 4

Absent 2

Floor Assignment Rep. Kretschmar

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

REPORT OF STANDING COMMITTEE

HCR 3048: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **DO NOT PASS** (8 YEAS, 4 NAYS, 2 ABSENT AND NOT VOTING). HCR 3048 was placed on the Eleventh order on the calendar.

2013 TESTIMONY

HCR 3048

Rep. Roscoe Streyke - Dist. 3

1
3-12-13

HCR 3048

How it affects Article X of the Constitution of North Dakota

Section 3

- Clarifies the need to define why taxes are being collected
- Gives a clear definition of "public purpose"

Section 5

- Mandates that taxes be assessed uniformly upon each class of property to ensure that all properties are being treated equally

Section 12

- Another safeguard to ensure that public moneys are only appropriated for a public purpose, no matter the level of government appropriating the funds.

Section 18

- Allows for state, county, and city governments to own and operate any industry, enterprise, or business, ie. The Bank of North Dakota or State Mill and Elevator.
- Clarifies the original intent of the section, which prohibits the state or any political subdivision making loans, extending its credit, or making donations to or in aid of any individual, association or corporation except for reasonable support of the poor, and also prohibits the government from owning stock in private enterprises.

The intention is not to change Article X, but rather clarify it and reinstate its original purpose. By defining public purpose and placing safeguards on public appropriations, North Dakotans can be assured that the state and local governments are using their tax dollars in an ethical manner. With these safe guards, North Dakotans can be confident that public moneys are only spent on public uses, and not to the benefit of private interests and corporate welfare.

Section 16. Private property shall not be taken or damaged for public use without just compensation having been first made to, or paid into court for the owner, unless the owner chooses to accept annual payments as may be provided for by law. No right of way shall be appropriated to the use of any corporation until full compensation therefor be first made in money or ascertained and paid into court for the owner, unless the owner chooses annual payments as may be provided by law, irrespective of any benefit from any improvement proposed by such corporation. Compensation shall be ascertained by a jury, unless a jury be waived. When the state or any of its departments, agencies or political subdivisions seeks to acquire right of way, it may take possession upon making an offer to purchase and by depositing the amount of such offer with the clerk of the district court of the county wherein the right of way is located. The clerk shall immediately notify the owner of such deposit. The owner may thereupon appeal to the court in the manner provided by law, and may have a jury trial, unless a jury be waived, to determine the damages, which damages the owner may choose to accept in annual payments as may be provided for by law. Annual payments shall not be subject to escalator clauses but may be supplemented by interest earned.

For purposes of this section, a public use or a public purpose does not include public benefits of economic development, including an increase in tax base, tax revenues, employment, or general economic health. Private property shall not be taken for the use of, or ownership by, any private individual or entity, unless that property is necessary for conducting a common carrier or utility business.

Good morning, Mr. Chairman and members of the committee. My name is Curly Haugland. I am a businessman in Bismarck, here today to testify in support of HCR 3048.

As many of you know, I have long been opposed to the use of public funding for private wealth creation and ask for your support today to begin to put an end to this practice in North Dakota. I am the plaintiff in a recent case, "Haugland v. City of Bismarck," which was brought with the help of the North Dakota Policy Council to get a definitive ruling by the North Dakota Supreme Court on the status of the anti-corruption provisions of the state constitution.

Our case worked its way through the courts at about the same time as another case, "Hale v. State of North Dakota", and the rulings in these two cases, taken together, demonstrate that the anti-corruption protections of the North Dakota Constitution have been nullified by a long series of court decisions that have, over time, actually reversed the intentions of the framers.

Take, for instance, what the courts have referred to as the "Gift Clause". Article X, Section 18 reads:

"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."

What started out as an anti-gift or anti-corruption clause in 1889 has now truly become a gift clause since the courts have determined that nothing can violate this section so long as the perpetrators say they are engaging in an "enterprise" while gifting public money to private purposes.

This resolution seeks to amend the anti-corruption clauses in order to restore the constitutional safeguards against the appropriation of public funds for private purposes.

Article X, Section 18

Amending Article X, Section 18 as written, will not affect the integrity or the original intent of the section, but simply clarify and reinstate its original purpose and meaning. The changes in this section in no way impede on the government's ability to own and operate a business. What the changes do is to ensure that, "Neither the state nor any political subdivision thereof shall otherwise loan or give its credit or make donation to or in aid of any individual, association or corporations except for reasonable support of the poor." Simply stated, public money can be used for the public purpose as defined in section 3 and for support of the poor, but not be given to private interests for their private benefit.

The ND Supreme Court reviewed the history of Article X, Section 18 and found that:

"[¶27] The people originally adopted Section 185 to prohibit the State or a political subdivision from making donations or giving or loaning credit to aid in the construction of railroads or other internal improvements."

They continue on and explain that in 1918 North Dakotans amended Section 18 to:

“[¶128]...expressly authorize the state, any county, or any city to engage in any industry, enterprise, or business not involving the manufacture or sale of intoxicating liquor, but to not otherwise loan, give its credit, or make donations to any individual, association, or corporation except for reasonable support of the poor.”

To reiterate, the goal of HCR 3048 is not to change ND’s Constitution, but simply to clarify its definitions and return it to its original intent. As you can see, the original intent of this section was to prohibit public funding of private railroads which were notoriously corrupt during that period of time, and later amended to authorize the state, any county, or any city to engage in any industry, enterprise or business. However, in these provisions it is never suggested that public moneys can be used for any individual, associations, or corporations, unless it’s for reasonable support of the poor. HCR 3048 is designed to clearly re-state these provisions and to clarify vague definitions.

We have provided you a complete copy of the Hale case in which you will find, beginning at paragraph 16, the courts rational in deciding both the Hale and Haugland cases.

Essentially, the court repeatedly states that economic development, urban renewal, job development and centers of excellence all avoid conflict with the constitution because they are “enterprises” and additionally, that the “public purposes” they fulfill are so broadly construed so as to be anything the legislature or city or county says it is because of the courts doctrine that “legislative acts are presumed constitutional”.

HCR 3048 proposes to amend sections 3, 5, 12, and 18 of Article X of the Constitution of North Dakota. Each of these sections have been nullified by the courts and no longer accomplish the original purpose, to prevent corrupt practices that allow private individuals, businesses and corporations to receive public funds to enrich themselves at taxpayers’ expense.

Article X, Section 3

Amending Article X, Section 3 as written, will not affect the integrity or the original intent of the section, but simply clarify and reinstate its original purpose and meaning. That purpose is to require there be a stated public purpose for each tax, to which purpose that tax will solely be appropriated. It also defines a public purpose as, “A governmental function that serves all citizens of this state equally and as further defined in section 16 of Article I.”

Under Article I, Section 16 a public purpose or use is defined:

“A public use or a public purpose does not include public benefits of economic development, including an increase in tax base, tax revenues, employment, or general economic health. Private property shall not be taken for the use of, or ownership by, any private individual or entity, unless that property is necessary for conducting a common carrier or utility business.”

This section also harmonizes the definition of “public purpose” so that it has the same meaning throughout the constitution. It is important we define these terms specifically in order to reduce the opportunity to misinterpret the meaning of these amendments.

According to the ND Supreme Court, they have stated what they believe to be a public purpose:

“[¶ 37]...We have said a public purpose ‘has for its objective the promotion of public health, safety, morals, general welfare, security, prosperity, and contentment of all the inhabitants or residents within a given political subdivision.’ We have also recognized, however, that ‘where an appropriation of public funds is primarily for public purposes it is not necessarily rendered violative of constitutional provisions against gifts and loans of public credit by an incidental result which may be of private benefit.’”

The vagueness of this definition has opened up many loopholes for private interests to take advantage. Without a clear definition of a public good, this loophole will continue to be open and private interests will continue to take advantage of public moneys and use them for private interests.

Article X, Section 5

Amending Article X, Section 5 as written, will not affect the integrity or the original intent of the section, but simply clarify and reinstate its original purpose and meaning. The changes clarify that, “taxes shall be assessed uniformly upon each class of property...” This change makes it clear, a uniform tax will be assessed on each class of property. All properties will be treated and affected the same.

Article X, Section 12

Amending Article X, Section 12 as written, will not affect the integrity or the original intent of the section, but simply clarify and reinstate its original purpose and meaning. The primary change in this section provides for updated language, as well as clarifying that appropriations made by the legislative assembly may only be made for public purposes. This will limit the ability of appropriations to be directed to support purely private interests. In effect, these changes simply ensure that all appropriations made by the legislative assembly are solely for public purposes as defined in section 3.

Mr. Chairman, we respectfully ask your favorable consideration of this resolution and encourage a “Do Pass” recommendation from the committee.

Curly Haugland

3-18-12

3

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

2012 ND 148

Robert Hale, Plaintiff and Appellant

v.

State of North Dakota; Jack Dalrymple, in his official capacity as Governor of North Dakota; Shane Goettle, Director, in his official capacity as Director of the Department of Commerce; North Dakota Department of Commerce; the Minot Area Development Corporation; the Minot City Council (Curt Zimbelman, Larry E. Frey, David F. Lehner, Bob Miller, Hardy Lieberg, Dean Frantsvog, Jim Hatlelid, Chuck Barnes, Tim Greenheck, Scott Knudsvig, Mark Jantzer, Blake Krabseth, Ron Boen, Lisa Olson, each in his or her official capacities); and the City of Minot, Defendants and Appellees

No. 20110146

Appeal from the District Court of Burleigh County, South Central Judicial District, the Honorable David E. Reich, Judge.

AFFIRMED.

Opinion of the Court by Crothers, Justice.

Lynn M. Boughey, Box 836, Bismarck, N.D. 58502-0836, for plaintiff and appellant.

Douglas A. Bahr, Solicitor General, Office of Attorney General, 500 North 9th Street, Bismarck, N.D. 58501-4509, for defendants and appellees State of North Dakota; Jack Dalrymple, in his official capacity as Governor of North Dakota; Shane Goettle, Director, in his official capacity as Director of the Department of Commerce and North Dakota Department of Commerce.

Bryan L. Van Grinsven, P.O. Box 998, Minot, N.D. 58702-0998, for defendant and appellee the Minot Area Development Corporation.

Randall J. Bakke, P.O. Box 460, Bismarck, N.D. 58502-0460, for defendants and appellees the Minot City Council and the City of Minot.

Hale v. State of North Dakota

No. 20110146

Crothers, Justice.

[¶1] Robert Hale appeals from a district court order dismissing his action against the State of North Dakota, the Governor of North Dakota in his official capacity, the Director of the Department of Commerce in his official capacity and the Department of Commerce ("State entities"); the Minot City Council members in their official capacities and the City of Minot "(Minot defendants)"; and the Minot Area Development Corporation ("MADC") for a declaration that the state and the federal constitutions prohibit the disbursement of public funds to private persons, associations, or corporations for economic development. Hale primarily argues the "gift clause" provisions of N.D. Const. art. X, § 18 prohibit the State entities and the Minot defendants from using public funds to loan, give credit or make donations to individuals, associations, or corporations for economic development. We conclude statutes authorizing the State entities and the Minot defendants to implement economic development programs constitute an enterprise for a public purpose under N.D. Const. art. X, § 18 and are not unconstitutional. We affirm.

I

[¶2] In August 2010, Hale brought suit alleging more than sixty state statutes authorizing those entities to implement economic development programs violate N.D. Const. art. X, § 18 and the due process, equal protection, and takings provisions of the state and the federal constitutions. Hale claimed those statutes violated N.D. Const. art. X, § 18 because they permitted using public funds to make loans, give credit, or make donations to private persons, associations, or corporations for reasons other than the support of the poor. Hale sought (1) a declaration that N.D. Const. art. X, § 18 prohibits direct and indirect disbursements of public funds, loans, grants, loan guarantees, and giving of credit or gifts to private persons, associations and corporations for reasons other than the support of the poor; (2) a declaration that the giving by grant, credit, or loan to corporations as part of an economic development program constitutes an improper gift or donation to individuals, associations or corporations because the gift or donation was not for the benefit of the poor; (3) a declaration that the state and the city economic development programs lack accountability; (4) a declaration that more than sixty state statutes violate the gift clause; (5) an injunction prohibiting the defendants from disbursing public funds to private entities for economic development; (6) an order making taxpayers whole for funds improperly spent for economic development since 1990; (7) an order awarding Hale sufficient attorney fees "to discourage the state and its political sub-divisions from enacting such schemes in the future"; and (8) reasonable attorney fees under 42 U.S.C. § 1988.

[¶3] One day after filing the complaint and before the defendants answered, Hale moved for what he called "declaratory judgment." Hale's motion really was one for summary judgment seeking the relief requested in his complaint, claiming it was

undisputed the defendants were improperly loaning money, giving credit, or making donations to individuals, associations and corporations in a manner that did not constitute reasonable support of the poor.

[¶4] The State entities opposed Hale's motion and moved to dismiss his complaint for failure to state a claim upon which relief could be granted. See N.D.R.Civ.P. 12(b)(6). The State entities argued the statutes authorizing the State to engage in economic development programs were constitutional:

"There is no question the North Dakota Legislative Assembly has authorized the distribution of public funds for economic development. See, e.g., N.D.C.C. § 54-60-02 (creating Division of Economic Development and Finance); N.D.C.C. § 54-34.3-04(3), (4) (stating the director of the Division of Economic Development and Finance is responsible to develop, implement, and coordinate a comprehensive program of economic development); N.D.C.C. ch. 4-14.1 (explaining purpose and authority of the agricultural fuel tax fund and the Agricultural Products Utilization Commission); N.D.C.C. § 10-30.5-02 (explaining purposes of North Dakota Development Fund); N.D.C.C. ch. 17-02 (providing for ethanol production incentives). In accordance with this statutory authority, the State, typically through the Department of Commerce, has and does disburse funds, provide grants, and provide loans to private persons, associations, or corporations in conjunction with economic development programs administered by it. The State, through the North Dakota Department of Commerce, has also taken equity positions in companies in conjunction with economic development programs administered by it. The question is not whether those activities are authorized or occur, but whether the authorizing statutes violate [N.D. Const. art. X, §] 18. As demonstrated below, the Legislative Assembly may authorize the distribution of public funds for economic development. Accordingly, the Complaint fails to state a claim upon which relief can be granted and should be dismissed."

[¶5] MADC moved to dismiss Hale's complaint for failure to state a claim, asserting N.D. Const. art. X, § 18 applies only to the State and its political subdivisions and does not apply to MADC because it is a private non-profit entity. MADC also asserted that if it is an agent of the City of Minot, it is not a necessary party because the alleged principal, the City of Minot, is a named defendant and MADC's alleged liability is no different than Minot's alleged liability.

[¶6] The Minot defendants answered Hale's complaint, opposed his motion for declaratory relief, and moved for summary judgment, claiming no disputed issues of material fact existed regarding the constitutionality of its economic development activities. The Minot defendants submitted an affidavit from its finance director, explaining Minot's relationship with MADC and its procedure for disbursing funds for economic development:

"2. The Minot Area Growth through Investment and Cooperation (MAGIC) Fund is financed by 40% of a 1% sales tax charged by the City of Minot. . . .

"3. . . . The MAGIC Fund provides incentives to businesses that desire to expand or locate in the greater Minot trade area. The primary purposes of the MAGIC Fund are to create new jobs, increase capital investment, improve the entrepreneurial climate of the region, and generally expand the primary sector financial base of the area. In addition, the MAGIC Fund may be used for workforce development to attract workers to meet workforce deficiencies in the region.

"4. The City of Minot enters from time to time into a Services Agreement with the Minot Area Development Corporation (hereinafter "MADC") for the purposes of engaging MADC's services, expertise, and resources.

"5. . . . Under this Services Agreement, MADC is obliged to, among other things, market and promote the City of Minot with respect to employment and business opportunity, coordinate efforts in this regard with Minot and various other entities, recruit and prospect new business, and present qualified applicants to the MAGIC Fund Committee.

"6. The Minot City Council must give its approval to the Services Agreement with MADC prior to its being signed by the Mayor of the City of Minot. . . .

"7. The MADC and/or other applicable organizations make recommendations to the MAGIC Fund Committee to provide economic incentives to certain businesses, if appropriate. The MAGIC Fund Committee then makes a recommendation to the Minot City Council to approve or deny the request for funds. The Minot City Council gives final approval or denial of all applications. MAGIC Fund assistance is provided to businesses in the form of various financial arrangements. These financial arrangements include but are not limited to loans, grants, and tax deferments."

[¶7] The district court granted the motions by the State entities and MADC to dismiss under N.D.R.Civ.P. 12(b)(vi) and the motion by the Minot defendants for summary judgment under N.D.R.Civ.P. 56. The court concluded statutes authorizing the State and governmental subdivisions to disburse public funds to private persons, associations or corporations for economic development programs constitute an enterprise for a public purpose under N.D. Const. art. X, § 18 and were not facially unconstitutional. In addressing Hale's claims that the defendants' economic development activities were unconstitutional, the court concluded the Minot defendants' implementation of the MAGIC Fund was an enterprise and Hale failed to raise a material factual dispute regarding his claim that the MAGIC Fund was not used for a public purpose. The court said even if the Minot defendants provided loans and grants for economic development "without strings" attached and with no expectation of repayment, the constitutional provision does not prohibit the Minot defendants from providing loans, giving credit or making donations for economic development. The court rejected Hale's claims the State entities' economic development activities were unconstitutional, concluding he failed to support his claims with sufficient citation or argument. The court also decided Hale's conclusory allegations regarding takings clause and equal protection violations were unsupported by relevant precedent or persuasive reasoning and were fatally deficient as a matter of law. The court found Hale's claims against MADC were the same as his claims against the Minot defendants and should be summarily dismissed. The court alternatively stated the constitutional prohibitions in N.D. Const. art. X, § 18 did not apply to MADC.

II

[¶8] Simultaneously with causing a "notice of entry of final order" to be served on the parties, Hale appealed from the district court's memorandum opinion and order

dismissing his action. Memorandum opinions and orders generally are not appealable under N.D.C.C. § 28-27-02. American Ins. Co. v. Midwest Motor Express, Inc., 554 N.W.2d 182, 183 n.1 (N.D. 1996). However, an appeal may be taken from a memorandum decision if "[it] also contains a final order or judgment . . . consistent with the memorandum decision," or if the court's decision indicates it was intended to be a final order of the court. Id. The court's memorandum decision disposed of all of the parties' claims, and we treat it as the court's final order. We therefore conclude we have jurisdiction to hear Hale's appeal.

III

[¶9] Hale argues the district court erred in granting the defendants' motions to dismiss and for summary judgment and in denying his motion for a summary judgment because statutes authorizing the State entities and the Minot defendants to implement economic development programs violate N.D. Const. art X, § 18 as a matter of law. Hale argues statutes authorizing economic development programs are unconstitutional on their face and even if this Court rejects his facial challenge to those statutes, factual disputes exist about the constitutionality of the defendants' economic development activities because "there is a lack of accountability, preferential treatment, and taking of taxpayer money and literally giving it away to corporations, including some of the wealthiest corporations in the world." He argues a governmental entity must be directly engaged in a business enterprise to satisfy the provisions of N.D. Const. art. X, § 18 authorizing the entity to make loans, to give its credit, or to make donations to any individual, association or corporation. Hale further claims the district court erred in granting the motions to dismiss his complaint, because the court failed to take the allegations and inferences in his complaint as true and erred in not providing him an evidentiary hearing to determine the relevant disputed facts.

[¶10] The State responds the district court properly dismissed Hale's facial constitutional challenge to economic development statutes under this Court's existing precedent and properly dismissed his claims about the constitutionality of the State's economic development activities because the conclusory allegations in his complaint failed to adequately plead a challenge to those activities. The Minot defendants argue Hale abandoned his claims against them and the court properly granted them summary judgment. MADC also claims Hale abandoned his claims against it and the court properly dismissed his claims against it.

[¶11] Hale argues the district court erred in not granting his motion for summary judgment. The court's ruling encompasses his claims against the Minot defendants and MADC, and we decline to hold he has abandoned his arguments against those entities.

[¶12] Although the issues identified by Hale broadly state the district court erred in dismissing his action and we hold he has not abandoned his arguments against any party, our review is nevertheless guided by several fundamental precepts. "A party must do more than submit bare assertions to adequately raise constitutional issues." Riemers v. O'Halloran, 2004 ND 79, ¶ 6, 678 N.W.2d 547. "We have said 'a party waives an issue by not providing supporting argument' and, 'without supportive reasoning or citations to relevant authorities, an argument is without merit.'" Id.(quoting Kautzman v. Kautzman, 2003 ND 140, ¶ 15, 668 N.W.2d 59). "We have also said 'a party making a constitutional claim must provide persuasive authority and reasoning.'" Riemers, at ¶ 6 (quoting Kautzman, at ¶ 15). "We have repeatedly stated we are not ferrets and we 'will not consider an argument that is not adequately articulated, supported, and briefed.'" Holden v. Holden, 2007 ND 29, ¶ 7, 728 N.W.2d 312 (quoting State v. Haibeck, 2006 ND 100, ¶ 9, 714 N.W.2d 52).

[¶13] We consider Hale's claims with those caveats in mind and in the procedural context of the district court's decision to dismiss under N.D.R.Civ.P. 12(b)(vi), now denominated as N.D.R.Civ.P. 12(b)(6), and N.D.R.Civ.P. 56. A motion to dismiss a complaint under N.D.R.Civ.P. 12(b)(vi) tests "the legal sufficiency of the statement of the claim presented in the complaint." Ziegelmann v. DaimlerChrysler Corp., 2002 ND 134, ¶ 5, 649 N.W.2d 556. On appeal from a dismissal under N.D.R.Civ.P. 12(b)(vi), "we construe the complaint in the light most favorable to the plaintiff, taking as true the well-pleaded allegations in the complaint." Ziegelmann, at ¶ 5. Under N.D.R.Civ.P. 12(b)(vi), a "complaint should not be dismissed unless 'it is disclosed with certainty the impossibility of proving a claim upon which relief can be granted.'" Ziegelmann, at ¶ 5 (quoting Lang v. Schafer, 2000 ND 2, ¶ 7, 603 N.W.2d 904). "We will affirm a judgment dismissing a complaint for failure to state a claim if we cannot 'discern a potential for proof to support it.'" Ziegelmann, at ¶ 5 (quoting Towne v. Dinius, 1997 ND 125, ¶ 7, 565 N.W.2d 762).

[¶14] Summary judgment under N.D.R.Civ.P. 56(c) is a procedural device for the prompt and expeditious disposition of any action without a trial "if either litigant is entitled to judgment as a matter of law and if no dispute exists as to either the material facts or the inferences to be drawn from undisputed facts, or if resolving factual disputes will not alter the result." Duemeland v. Norback, 2003 ND 1, ¶ 8, 655 N.W.2d 76. Whether a district court properly grants a summary judgment motion "is a question of law that we review de novo on the record." Trinity Hosps. v. Mattson, 2006 ND 231, ¶ 10, 723 N.W.2d 684.

[¶15] "The party moving for summary judgment must show . . . no genuine issues of material fact [exist] and the case is appropriate for judgment as a matter of law." Mattson, 2006 ND 231, ¶ 10, 723 N.W.2d 684 "In determining whether summary judgment was appropriately granted, we . . . view the evidence in the light

most favorable to the party opposing the motion," giving that party "the benefit of all favorable inferences which can reasonably be drawn from the record." Hasper v. Center Mut. Ins. Co., 2006 ND 220, ¶ 5, 723 N.W.2d 409. However, "[u]nder N.D.R.Civ.P. 56, if the movant meets its initial burden of showing the absence of a genuine issue of material fact, the party opposing the motion may not rest on mere allegations or denials in the pleadings, but must present competent admissible evidence by affidavit or other comparable means to show the existence of a genuine issue of material fact." Riemers v. Grand Forks Herald, 2004 ND 192, ¶ 4, 688 N.W.2d 167.

A

[¶16] In that context, we consider Hale's arguments about the "gift clause" provisions in N.D. Const. art. X, § 18, which at all times material to this case provided:

"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."

[¶17] In Haugland v. City of Bismarck, 2012 ND 123, ¶¶ 22-40, we recently considered a constitutional challenge under N.D. Const. art. X, § 18 to a municipality's use of tax increment financing to fund urban renewal projects under N.D.C.C. ch. 40-58. We said "statutory enactments are presumed to be constitutional unless the statutory scheme is clearly shown to contravene the state or federal constitution." Haugland, at ¶ 23. In describing principles for assessing the constitutionality of statutory provisions under the state constitution, we also explained "the 'state constitution is not a grant but a limitation on legislative power, so that the legislature may enact any law not expressly or inferentially prohibited' by the state or federal constitution." Id. (quoting Northwestern Bell Tel. Co. v. Wentz, 103 N.W.2d 245, 252 (N.D. 1960)).

[¶18] In Haugland, we outlined the historical development of the "gift clause" to its current language from a provision originally precluding the state and political subdivisions from making a loan, giving credit or making donations to any individual, association or corporation except for necessary support for the poor. 2012 ND 123, ¶¶ 26-28. We discussed relevant cases construing the current language of the gift clause. Id. at ¶¶ 29-30 (discussing Wentz, 103 N.W.2d 245 and Gripentrog v. City of Wahpeton, 126 N.W.2d 230 (N.D. 1964)). We also discussed Kelly v. Guy, 133 N.W.2d 853 (N.D. 1965), and we said that case involved a federal constitutional challenge to a separate state constitutional provision under the due process clause of the Fourteenth Amendment to the United States Constitution. Haugland, at ¶ 31. We

said Kelly decided a public purpose issue under the Fourteenth Amendment, but we explained Kelly "did not otherwise analyze a constitutional challenge to a statutory enactment under the current language of N.D. Const. art. X, § 18." Haugland, at ¶ 31.

[¶19] We said our decisions construing the current language of the gift clause authorize the state, any county or any city to "make loans, extend credit, or make donations when the entity is engaged in any industry, enterprise, or business, and "[t]he prohibition is against "otherwise" loaning or giving its credit or making donations to or in aid of any individual, association, or corporation." Haugland, 2012 ND 123, ¶ 33 (quoting Gripentrog, 126 N.W.2d at 238 and citing Wentz, 103 N.W.2d at 253-54). We construed the plain, ordinary and commonly understood meaning of the disjunctive phrase "engage in 'any industry, enterprise, or business'" to give meaning to each term, and we held the term "enterprise" means "a project or undertaking that is especially difficult, complicated, or risky, or a systematic purposeful activity." Haugland, at ¶¶ 34-35. Under "the commonly understood meaning of enterprise, a municipality's implementation of an urban renewal plan under [N.D.C.C. ch. 40-58] by the duly-elected officials of a municipality constitutes a project or undertaking that is especially difficult, complicated, or risky, or a systematic purposeful activity within the meaning of" enterprise. Haugland, at ¶ 35. We thus held urban renewal under N.D.C.C. ch. 40-58 constitutes an "enterprise" under N.D. Const. art. X, § 18. Haugland, at ¶ 35.

[¶20] In Haugland, we separately discussed "the interrelationship of N.D. Const. art. X, § 18, and a 'public purpose' analysis under the due process clause of the 14th Amendment." 2012 ND 123, ¶¶ 37-40. We explained the gift clause "incorporates restrictions of the due process clause of the federal constitution and requires the use of public funds derived from taxation to be for a public purpose." Id. at ¶ 37. We said "a public purpose 'has for its objective the promotion of public health, safety, morals, general welfare, security, prosperity, and contentment of all the inhabitants or residents within a given political subdivision,'" and "'where an appropriation of public funds is primarily for public purposes it is not necessarily rendered violative of constitutional provisions against gifts and loans of public credit by an incidental result which may be of private benefit.'" Id. at ¶ 37 (quoting Gripentrog, 126 N.W.2d at 237 and Stutsman v. Arthur, 73 N.D. 504, 518, 16 N.W.2d 449, 454 (1944)). We held "the urban renewal provisions of N.D.C.C. ch. 40-58 satisfy a public purpose for a municipality to engage in an enterprise" under N.D. Const. art. X, § 18. Haugland, at ¶ 40.

[¶21] Under Haugland and our prior decisions construing the current language of N.D. Const. art. X, § 18, the State, any county or any city may make loans, extend credit or make donations when the entity engages in any business, industry or enterprise for a public purpose. Under that framework, the issue in this case is whether economic

development statutes authorize the State entities and the Minot defendants to engage in an enterprise for a public purpose.

[¶22] Hale generally argues the defendants violated the gift clause by the "taking of taxpayer money and literally giving it away to businesses, persons, and associations." He does not explain how any specific state statutes violate the gift clause; rather, his only reference to specific statutes provides:

"It is clear that the City of Minot and the State of North Dakota are providing loans to individuals, associations, and corporations through the MAGIC Fund and is [sic] awarding grants and allowing the forgiveness of loans; it has also become an owner of capital stock in an association or corporation. Each grant or forgiveness of a loan constitutes a donation or gift that is not for the reasonable support of the poor. The City of Minot is distributing such funds through its MAGIC Fund, under the authority of Chapter 40-57.4. The State of North Dakota, primarily through the Commerce Department, is distributing such funds under the authority of Chapters 15-69, 54-34.3, 54-60, and 54-60.1, as will [sic] as other statutes. It has also authorized counties to distribute funds through Chapter 11-11.1."

[¶23] The statutes cited by Hale authorize the State entities, cities and counties to implement economic development programs. See N.D.C.C. ch. 11-11.1 (County Job Development Authorities); N.D.C.C. ch. 15-69 (Centers of Excellence); N.D.C.C. ch. 40-57.4 (City Job Development Authorities); N.D.C.C. ch. 54-34.3 (Department of Commerce Division of Economic Development and Finance); N.D.C.C. ch. 54-60 (Department of Commerce); and N.D.C.C. ch. 54-60.1 (Business Incentives, Agreements, and Reports).

[¶24] Chapter 11-11.1, N.D.C.C., authorizes a board of county commissioners to create, or discontinue, a job development authority by resolution. N.D.C.C. § 11-11.1-01. The electors of a county may also discontinue an existing county job development authority. Id. The county may levy a tax for a job development authority fund. N.D.C.C. § 11-11.1-04. Section 11-11.1-03, N.D.C.C., authorizes a county job development authority "to use its financial and other resources to encourage and assist in the development of employment and promotion of tourism within the county," including the power to gift, trade, or purchase and to hold, improve, and dispose of real and personal property, and to expend money raised by the tax authorized by the chapter for the purposes in the chapter.

[¶25] Chapter 15-69, N.D.C.C., authorizes a Centers of Excellence program with a Centers of Excellence Commission appointed by the State Board of Higher Education and the North Dakota Economic Development Foundation. N.D.C.C. § 15-69-03. Centers of Excellence programs are funded through a special fund in the state treasury appropriated to the Department of Commerce. N.D.C.C. §§ 15-69-04 and 15-69-06. Under those provisions, the Centers of Excellence Commission generally directs the Department of Commerce to disburse matching funds to a particular Center of Excellence for economic development under a process described in N.D.C.C. § 15-69-

05. See also N.D.C.C. §§ 15-69-01(2) (defining center) and 15-69-04 (describing Centers of Excellence program).

[¶26] Section 40-57.4-01, N.D.C.C., authorizes the governing body of a city, by resolution, to create or discontinue a job development authority after notice and a public hearing. The electors of a city also may discontinue an approved job development authority. Id. A city is authorized to levy a tax for a city job development authority fund. N.D.C.C. § 40-57.4-04. Section 40-57.4-03, N.D.C.C., authorizes a city job development authority to "use its financial and other resources to encourage and assist in the development of employment within the city," including the power to "gift, trade, or purchase, and to hold, improve, and dispose of real and personal property," and "to expend moneys raised by the tax for the purposes [of] this chapter." N.D.C.C. § 40-57.4-03(5) and (6).

[¶27] Chapter 54-34.3, N.D.C.C., authorizes a division of economic development and finance within the Department of Commerce to enhance the economic development of the state. N.D.C.C. §§ 54-34.3-01 and 54-60-02(1)(b). Section 54-34.3-01, N.D.C.C., describes the mission of the division as promoting economic development in the state. The director of the division is responsible for developing, implementing, and coordinating a comprehensive program for economic development consistent with the division's mission. N.D.C.C. § 54-34.3-04(3). Chapter 54-60, N.D.C.C., describes the duties of the Department of Commerce, and N.D.C.C. § 54-60-04 creates the Economic Development Foundation to develop a strategic plan for economic development in the state.

[¶28] Chapter 54-60.1, N.D.C.C., outlines a procedure for the State or a political subdivision to provide business incentive disbursements to a business for a public purpose. N.D.C.C. §§ 54-60.1-01(2) and 54-60.1-02. The statutory provisions require a business incentive agreement with statutory guidelines and also include provisions for failure to meet goals. N.D.C.C. §§ 54-60.1-03 and 54-60.1-04.

[¶29] Hale argues N.D. Const. art X, § 18 only authorizes governmental entities to directly engage in business enterprises and claims the state statutes permit the governmental entities to gift public funds to private third parties under the guise of economic development. He claims those procedures do not constitute directly engaging in a business enterprise.

[¶30] We conclude, however, statutorily authorized economic development programs constitute an "enterprise" under the plain language of N.D. Const. art. X, § 18 because they constitute an authorized project or undertaking that is especially difficult, complicated, or risky, or constitute systematic purposeful activity within the meaning of that provision. We reject Hale's argument that N.D. Const. art X, § 18 only

authorizes the governmental entities to directly engage in a business enterprise because that argument is inconsistent with the disjunctive word "or" in the phrase "engage in 'any industry, enterprise, or business'" and with the ordinary meaning of enterprise. See Haugland, 2012 ND 123, ¶ 34. The constitutional language does not require the governmental entity to "directly" engage in a business enterprise. Rather, the language authorizes the governmental entity to engage in an enterprise, which, in view of the disjunctive use of industry, enterprise, or business and the plain meaning of enterprise, may include the implementation of a systematic purposeful program for economic development through third parties.

[¶31] Our interpretation is consistent with Attorney General opinions holding that authorized economic development programs constitute an enterprise. See N.D. Op. Att'y Gen. 95-L-233 (October 11, 1995) (concluding city may engage in enterprise for economic development by creating job development authority or contracting with industrial development organization under N.D.C.C. ch. 40-57.4); N.D. Op. Att'y Gen. 93-L-129 (April 12, 1993) (concluding job development under N.D.C.C. ch. 11-11.1 is enterprise permitting county to loan funds for public purpose). Although not binding on courts, opinions of the Attorney General are entitled to deference if persuasive. Riemers v. City of Grand Forks, 2006 ND 224, ¶ 11, 723 N.W.2d 518. The Attorney General's opinions are consistent with our interpretation of enterprise and are persuasive.

[¶32] Because authorized economic development programs constitute an enterprise, N.D. Const. art. X, § 18 allows the governmental entities to make loans, extend credit or make donations while implementing those programs, but prohibits the entities from "'otherwise' loaning, giving its credit, or making donations to or in aid of any individual, association, or corporation." Haugland, 2012 ND 123, ¶ 33 (quoting Gripentrog, 126 N.W.2d at 238 and citing Wentz, 103 N.W.2d at 253-54). We hold the statutes cited by Hale authorize the State entities, a county, and a city to implement programs for the purpose of economic development and satisfy the requirement for those entities to engage in an enterprise within the meaning of N.D. Const. art. X, § 18.

[¶33] As in Haugland, 2012 ND 123, ¶¶ 37-40, however, we also consider whether economic development constitutes a "public purpose" under the gift clause of the state constitution and the due process clause of the 14th Amendment of the United States Constitution. In another context involving condemnation of private land for a purported public use, this Court recognized that economic welfare and stimulation of commercial growth satisfied the public use and purpose requirements for takings under N.D. Const. art. I, § 16 and U.S. Const. amend. V. City of Jamestown v. Leever's Supermarkets, Inc., 552 N.W.2d 365, 369 (N.D. 1996). After Leever's, the citizens of North Dakota amended N.D. Const. art. I, § 16 in 2006 to provide that

"[f]or purposes of this section, a public use or a public purpose does not include public benefits of economic development, including an increase in tax base, tax revenues, employment, or general economic health." 2007 N.D. Sess. Laws ch. 578. The plain language of that amendment adopted by the citizens of North Dakota suggests that for purposes of other provisions of the North Dakota constitution, economic development may be a public purpose.

[¶34] The public purpose includes the promotion of prosperity and general welfare of all the inhabitants or residents within a given governmental entity. *E.g.*, Gripentrog, 126 N.W.2d at 237. In Haugland, we rejected an argument for a narrower interpretation of public purpose that required urban renewal to benefit all the inhabitants of a city. 2012 ND 123, ¶ 38. We said one of the purposes of urban renewal plans was to increase the tax base for property within the city's territorial limits, and we declined to hold those benefits did not accrue to all the city's inhabitants. *Id.* In another context, this Court has recognized the "primary object[ive] of all government is to provide for the welfare of its citizens." Ferch v. Housing Auth., 59 N.W.2d 849, 857 (N.D. 1953) (holding statute authorizing low rent housing was constitutional). In Gripentrog, this Court recognized a public purpose was satisfied by the construction and leasing of a sugar beet processing plant to improve a municipality's local economy. 126 N.W.2d at 232, 237. *See also* Patterson v. City of Bismarck, 212 N.W.2d 374, 388 (N.D. 1973) (stating that providing facilities within business district being reconstructed with rental and commercial enterprise is closely identified with the functions of a prosperous city). An obvious goal of economic and job development programs is to increase the general economic health, welfare and prosperity of the people in a governmental entity. We decline Hale's invitation to conclude economic development does not satisfy the public purpose requirements of the gift clause of the state constitution and the due process clause of the 14th Amendment of the United States Constitution, and we hold authorized economic development programs satisfy the public purpose component of N.D. Const. art. X, § 18 and the due process clause of the 14th Amendment.

[¶35] We conclude the statutory provisions authorizing the State entities and the Minot defendants to implement economic and job development programs are an enterprise for a public purpose under Haugland and this Court's precedent construing the current language of N.D. Const. art. X, § 18. As we explained in Haugland, the "justice, wisdom, necessity, utility, and expediency of legislation are questions for legislative and not judicial determination, and we are concerned here only with the constitutionality" of those statutes. 2012 ND 123, ¶ 40. We conclude the statutory provisions authorizing the State entities and the Minot defendants to engage in economic development are facially constitutional.

[¶36] Hale also argues the economic development programs implemented by the State entities and the Minot defendants are unconstitutional as applied. His complaint includes numerous allegations of disbursements of public money to businesses, persons, or associations, which were not for the reasonable support of the poor.

[¶37] Because the implementation of economic development programs constitutes an enterprise for a public purpose, governmental entities engaged in that enterprise may extend credit, make loans, or make donations in furtherance of those programs. To the extent Hale argues those disbursements must be for the reasonable support of the poor, his argument misconstrues the meaning of the gift clause.

[¶38] Hale has not identified any disbursements that were not made under authorized economic development programs for a public purpose. Unlike in Haugland, Hale has not argued either the State entities or the Minot defendants failed to comply with any specific economic development statutes. See 2012 ND 123, ¶¶ 46-64. Rather, Hale generally argues the defendants' economic development programs lack accountability, involve preferential treatment and violate the due process, the equal protection and the takings clauses of the state and the federal constitutions. He claims he was entitled to a hearing to demonstrate his allegations. Hale's conclusory statements in his appellate brief do not cite any relevant evidence he may have provided at an evidentiary hearing. His reliance on Leever's Supermarkets, 552 N.W.2d at 374, for a hearing on public purpose is misplaced because that case involved whether a proposed taking of private property was for a public purpose under requirements for condemnation. He cited no persuasive authority or argument to elevate his claims to a taking action or to support an equal protection claim.

[¶39] Hale's reliance on Teigen v. State, 2008 ND 88, 749 N.W.2d 505, and State v. Blunt, 2008 ND 135, 751 N.W.2d 692, also is misplaced. Teigen, at ¶¶ 28-31, involved consideration for a contract, and Blunt, at ¶¶ 21-25, involved a criminal prosecution for misapplication of entrusted property by a governmental employee. Neither case involved arguments about whether economic development constitutes an enterprise for a public purpose. Moreover, Hale's arguments about accountability and preferential treatment have not cited violations of any specific statutory provisions. In the absence of claims that specific disbursements were not made under an authorized enterprise for economic development and were not made for a public purpose, those issues may be resolved in the political process rather than in a lawsuit challenging the constitutionality of the statutes.

[¶40] "A party must do more than submit bare assertions to adequately raise constitutional issues." Riemers, 2004 ND 79, ¶ 6, 678 N.W.2d 547. "[W]ithout supportive reasoning or citations to relevant authorities, an argument is without merit." Id. (quoting Kautzman, 2003 ND 140, ¶ 15, 668 N.W.2d 59). "We are not

ferrets and we 'will not consider an argument that is not adequately articulated, supported, and briefed.'"Holden, 2007 ND 29, ¶ 7, 728 N.W.2d 312 (quoting Haibeck, 2006 ND 100, ¶ 9, 714 N.W.2d 52). Hale has not provided persuasive arguments showing the district court erred in deciding his constitutional challenge to the defendants' economic development activities or to his equal protection and takings claims. We conclude those arguments are without merit.

C

[¶41] It is unnecessary to consider any other claims made by Hale because they are either unnecessary to our decision or without merit.

IV

[¶42] We affirm the order.

[¶43]

Daniel J. Crothers
Mary Muehlen Maring
Carol Ronning Kapsner
Dale V. Sandstrom
Gerald W. VandeWalle, C.J.