

N.D.A.G. Letter to Hausauer (Feb. 8, 1985)

February 8, 1985

Honorable Roy Hausauer
Speaker of the House
House of Representatives
State Capitol
Bismarck, North Dakota 58505

Dear Representative Hausauer:

Thank you for your letter of January 24, 1985, asking several questions concerning soil conservation trust lands held by the North Dakota Association of soil Conservation Districts pursuant to N.D.C.C. §4-22-51.

N.D.C.C. §4-22-51 states, in part, as follows:

The state of North Dakota hereby accepts and declares to be held in trust for the soil conservation districts of the state for use in carrying out the soil conservation program those certain tracts or parcels of land lying and being in the county of Burleigh and state of North Dakota and more particularly described as follows:

* * *

Subject, however, to the following rights, easements, exceptions and reservations:

* * *

3. Reservation to the United States of America and its assigns of an undivided three-fourths interest in all coal, oil, gas, and other minerals, including three-fourths of all sand, gravel, stone, clay and similar minerals, in or under such property, together with the usual mining rights, powers, and privileges. .

The said lands, having been conveyed to the state of North Dakota by the United States of America for use in carrying out the soil conservation program of the soil conservation districts of the state, are further subject to the condition that they shall be used for public purposes and if at any time cease to be so used shall revert to and become revested in the United States.

* * *

(Emphasis supplied.)

We have also examined the deed conveying the parcel of land described in N.D.C.C. §4-22-51. It also contains, substantially, the conditions mentioned in N.D.C.C. §4-22-51. In fact, the deed appears to be the basis for the language in the statute.

Based on the language of the deed and the statute, the United States has a future interest (a possibility of reverter) and the state of North Dakota has a fee simple determinable. Like a fee simple absolute, a fee simple determinable may be conveyed and transferred. However, the happening of the event, the condition precedent mentioned in the deed and the statute (if the land ever ceases to be used for public purposes), automatically terminates the interest of the state and reverts the United States' reversionary interest.

Therefore, although the Legislative Assembly of the state of North Dakota could amend the statute to remove the language requiring the land to be held in trust for the soil conservations for use in carrying out soil conservation programs and requiring it to be used for public purpose, the deed of conveyance still would contain these conditions. If the land were ever sold and not used for a public purpose, or even, arguably, if it were not used in carrying out the soil conservation program of the soil conservation districts of the state, it would automatically revert to the United States.

Of course, reversionary interests can be transferred. However, to transfer the interest would require a written release, deed of release, or termination of covenant by recision executed by the U.S. Department of Agriculture, the agent for the grantor, the United States of America.

Since the United States of America also reserved an undivided three-fourths interest in the minerals under this land, pursuant to N.D.C.C. §4-22-51, the state of North Dakota cannot sell or convey such interests. N.D.C.C. §38-09-01 requires that in every transfer of land fifty percent of all oil, natural gas, or other minerals which may be found on or under the land shall be reserved to the state of North Dakota. Therefore, it would be unlawful for the state of North Dakota to transfer its one-fourth interest in the minerals under this land since it is impossible for the state to reserve the fifty percent interest which is required by N.D.C.C. §38-09-01. Additionally, the language of the reversionary clause forbidding uses for a non-public purpose may also preclude a sale of the minerals.

Sincerely,

Nicholas J. Spaeth

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