

N.D.A.G. Letter to Gerntholz (Feb. 12, 1986)

Overruled by N.D.A.G. 99-F-07

February 12, 1986

Honorable Gerald F. Gerntholz
North Dakota State Representative
District 24
RR 1 - Box 40
Sanborn, ND 58480

Dear Representative Gerntholz:

Thank you for your letter of January 17, 1986, requesting an opinion as to the circumstances, if any, by which townships may reacquire the power to enact zoning regulations after relinquishing such power to the county as provided for N.D.C.C. § 11-33-20.

Enclosed you will find a copy of an opinion issued by this office on July 6, 1965, as well as a letter issued by this office on March 11, 1966. By these documents, this office has concluded that once a township has validly relinquished its zoning authority to the county pursuant to N.D.C.C. § 11-33-20, there is no statutory procedure by which the township may withdraw their relinquishment and reacquire the authority to enact such zoning regulations.

Since this opinion and letter have been issued, the statutes concerning township zoning have not been amended. Thus, we may only assume that these conclusions are accurate and that the legislature has not intended such reacquirement of zoning authority by a township following valid relinquishment of such authority.

Therefore, the answer to your question is that a township may not reacquire its power to enact zoning regulations following relinquishment of such authority to the Board of County Commissioners pursuant to N.D.C.C. § 11-33-20.

There is discussion in the 1966 letter as to a possible method to accomplish this by an action in equity before an appropriate North Dakota court. Whether this method would succeed, is not known. However, it is indeed an option that may be considered by those who wish to reacquire such zoning authority for a township.

Sincerely,

Nicholas J. Spaeth

cv
Enclosures