

N.D.A.G. Letter to Slorby (March 17, 1988)

March 17, 1988

Mr. Tom Slorby
Ward County State's Attorney
Ward County Courthouse
Minot, ND 58701

Dear Mr. Slorby:

Thank you for your letter of December 8, 1987, where you asked a number of questions concerning a township's authority to pay a portion of the cost of a street paving project in a rural subdivision, when the initial cost of the public improvement has been levied as a special assessment under N.D.C.C. § 11-11-55.1. I apologize for the delay in responding to you.

A township may pay a portion of the cost of a street paving project in a rural subdivision when the initial cost of the public improvement has been levied as a special assessment under N.D.C.C. § 11-11-55.1. The authority by which a township may pay a portion of the cost of a public improvement financed by the levy of a special assessment may be exercised by the township electors or the board of township supervisors.

The authority of the township electorate is considered first. Under N.D.C.C. § 58-03-07, the Legislature has granted to the township electors certain enumerated powers. Among those powers is the ability to levy taxes for road construction and repair, coupled with the ability to specify the purpose for which such funds are expended.

58-03-07. Powers of electors. The electors of each township have the power at the annual township meeting:

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12. To authorize the levy of township taxes for the repair and construction of roads and bridges and for other township charges and expenses within the limits prescribed in title 57.
13. To direct the expenditure of funds raised for the repair and construction of roads within the limits provided in title 24.

....

Consequently, the township electorate may appropriate funds for the purpose of paying a portion of the cost of a public improvement financed by a special assessment levied on a rural subdivision.

The ruling in Caterpillar Tractor Company v. Detman Township, 244 N.W. 876, 879 (N.D. 1932), illustrates that the power to levy a road tax and direct its expenditure is vested in the township electorate.

In the case of Austin Manufacturing Company v. Twin Brooks Township, Grant County, 16 S.D. 126, 91 N.W.470, 471, the Supreme Court of South Dakota lays down the following rules: "Under the theory of township government in this state, substantially all the power pertaining to the government of the town rests with the electors of the township, to be exercised by them, either at their annual meeting in March, or at a special meeting called in the manner prescribed by law. The powers conferred upon the township supervisors are limited, and, as was said by this court in Aldrich v. Collins, 3 S.D. 154, 52 N.W. 854, 'Town supervisors are agents of the town, and possess only such powers as are expressly conferred upon them by statute, or as are necessary to enable them to perform the duties imposed by law.'

The authority of the board of township supervisors to commit township funds toward the partial payment of the cost of a street paving project is next considered. The North Dakota Supreme Court has observed that the grant of legislative power to such a board is to be strictly construed. In Caterpillar, the court stated:

The holding and reasoning in these cases is applicable under our statutes governing township supervisors. They possess no general authority to contract on behalf of the township. They are limited by the statutes and the authority conferred upon them by the electors of the township. They are but agents of the township and contracts made by them, without authority of the town meeting or of statute, are absolutely void. Their authority should be strictly construed, and all persons dealing with them are presumed to have notice of their limited authority.

Id.

N.D.C.C. § 57-15-19.2 grants a board of township supervisors the discretionary power to create a special road fund and disburse such funds on a discretionary basis.

57-15-19.2. Township supervisors authority to transfer funds into special road fund -- Limitations -- Use. The board of supervisors, at the time of the annual township meeting, upon resolution, may transfer or set aside a part or all of any funds into a special road fund, which fund shall be separate and distinct from all other funds. The special road fund shall not exceed the sum of thirty thousand dollars for any one congressional township. The special road fund may be expended, at the option of the board of supervisors, for the purpose of road construction, graveling, or surfacing.

Consequently, within the statutory limitations, a board of township supervisors would have the discretionary authority to expend township road funds for the payment of a portion of the cost of a public improvement financed by the levy of a special assessment in a rural subdivision. Since the imposition of the special assessments arise from the road surfacing project, it would qualify for one of the purposes for which the monies in the special road fund could be expended.

In addition to the board of township supervisors' authority to create and disburse funds from a special road fund, N.D.C.C. § 24-06-19 allows the board to expend road taxes paid into the township treasury in the improvement of highways deemed most expedient for the public interest. This statute does contain some restrictions as to the amount of road taxes which may be spent. These restrictions also apply to the special road fund provided for by N.D.C.C. § 57-15-19.2.

In summary, either the township electorate or a board of township supervisors may authorize a township's participation in the payment of the cost of a street improvement project financed by special assessments. None of the applicable statutes contain language restricting the township's participation in such an undertaking to a certain percentage of the total amount of the special assessment.

I hope this is helpful to you and adequately responds to your questions.

Sincerely,

Nicholas J. Spaeth

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