

N.D.A.G. Letter to Gregg (April 20, 1988)

April 20, 1988

Mr. John R. Gregg
Gregg & McLean
Attorneys at Law
P.O. Box 26
Bottineau, ND 58318

Dear Mr. Gregg:

Thank you for your letter of April 7, 1988, wherein you inquire whether a special assessment levy must be terminated if the obligation is satisfied by the municipality from other resources.

You enclosed a photocopy of 1976 N.D. Op. Att'y Gen. 19 wherein former Attorney General Allen I. Olson concluded, at 21, that "if sufficient money is collected on a special assessment project in less time than the assessment period, the City must stop levying assessment for the remaining years."

Attorney General Olson cited N.D.C.C. §§ 40-23-07 and 40-24-18 in support of his conclusion. These sections have not been amended since the opinion was issued.

Further, Attorney General Olson recognized that if "the subject matter becomes that amount that would be raised by continuing to levy for a year or years after the basic object of the tax has already been satisfied, you would necessarily run into insurmountable constitutional barriers." 1976 N.D. Op. Att'y Gen. 19, 21. See N.D. Const. Art. X, §§ 3, and 5 (formally §§ 175 and 176).

Therefore, it is my opinion that, for the reasons stated in 1976 N.D. Op. Att'y Gen. 19, a special assessment levy must be terminated if the obligation is satisfied by the municipality from other resources.

If you wish to discuss this matter further, please do not hesitate to contact me.

Sincerely,

Nicholas J. Spaeth

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