

N.D.A.G. Letter to LaQua (May 2, 1988)

May 2, 1988

Mr. Vincent A. LaQua
Wells County State's Attorney
P.O. Box 347
Fessenden, ND 58438

Dear Mr. LaQua:

Thank you for your letter of March 31, 1988, describing the sale of gravel by Bremen Township and questions which have been posed concerning that activity.

According to your letter, Bremen Township owns a tract of land upon which it causes gravel to be excavated, crushed, and stockpiled. After this process is completed, gravel is sold to other persons or entities and the township receives a certain share of the moneys received for the gravel. The sale of the gravel occurs privately and does not occur at public sale despite the fact that on two occasions in recent years, the amount received by the township for gravel has exceeded \$1,000.

You first inquire as to the applicability of N.D.C.C. § 58-03-16 to the factual situation involving Bremen Township. This statute allows townships to sell real property as authorized by the township electors. Property may be sold privately unless the property has a value of \$1,000 or more in which case it must be sold at a public sale.

The key term in N.D.C.C. § 58-03-16 is "real property." That term is defined for the entire Century Code at N.D.C.C. § 1-01-49(8) to be coextensive with lands, tenements, and hereditaments. "Land" has been defined as the solid material of the earth, whatever may be the ingredients of which it is composed, whether soil, rock, or other substance. N.D.C.C. § 47-01-04. Reading these definitions together, one would conclude that a natural resource such as gravel is part of land which constitutes real property.

However, in the factual situation described in your letter, there is no sale of land itself. Instead, it is the gravel retrieved from the land following the excavation process that is the subject of the sale. This distinction is critical in the analysis as to the applicability of N.D.C.C. § 58-03-16, for the general rule is that gravel's legal nature is transformed from realty to personality when severed from the ground. 1 A Thompson, Real Property, 99-100 (1980).

North Dakota law acknowledges the severance from realty of minerals or the like and the subsequent sale of those severed substances. N.D.C.C. § 41-02-07(1) states that the contract for the sale of minerals "or the like" to be removed from realty is a contract for the sale of goods if they are to be severed by the seller. The gravel belonging to the Bremen Township has been severed from the land by the township acting through an arrangement

with the contractor. It is after the severance has occurred that the gravel is then sold by the township through the contractor to a third party. Given these facts and the applicability of N.D.C.C. § 41-02-07(1), I would conclude that the sale of gravel by Bremen Township is not the sale of real property and does not trigger the provisions of N.D.C.C. § 58-03-16.

Your second question is whether the township may indeed sell excavated rock and gravel to other townships and individuals as it sees fit.

A township has the authority to purchase and hold lands within its limits and for the use of its inhabitants pursuant to N.D.C.C. § 58-03-01(2). When it is in the interests of its inhabitants, the township may excavate the gravel from that corporate property (i.e., the land) under the authority given to it by N.D.C.C. § 58-03-01(4). This latter statute empowers a township to "make such orders for the disposition . . . or use of its corporate property as may be deemed conducive to the interests of its inhabitants." Pursuant to this latter statute, the township may then sell excavated rock and gravel taken from its own land when the township electors decide such action should occur in the best interest of the township.

I hope this information is helpful to you.

Sincerely,

Nicholas J. Spaeth

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