

N.D.A.G. Letter to Fitzner (June 29, 1992)

June 29, 1992

Mr. Jon Fitzner
City Attorney, Valley City
PO Box 330
Valley City, ND 58072

Dear Mr. Fitzner:

Thank you for your April 17, 1992, letter requesting an opinion as to whether the existing Valley City Park District (hereafter Park District) may be dissolved to eliminate it and return its current responsibilities to the Valley City City Commission (hereafter City Commission). You also ask by what means and procedures such action could be accomplished by the electors of the city of Valley City.

You indicated that the current Park District was formed pursuant to N.D.C.C. ch. 40-49. Thus, it has the authority outlined in that chapter. You also indicate that the Park District operates a public recreation system as authorized by N.D.C.C. ch. 40-55.

Both cities and park districts have the authority to operate a public recreation system. N.D.C.C. § 40-55-02. The current 2½ mill levy approved by the voters for the Park District's operation of a public recreation system may be discontinued only by an election. N.D.C.C. § 40-55-09. In order to transfer the responsibilities of the Park District or the public recreation system to the City Commission, it is necessary to approve the following two measures by a majority vote:

1. Should the Park District of the City of Valley City discontinue its operation of the public recreation system and discontinue the 2½ mill tax levy therefor?
2. Should the city of Valley City establish and operate the public recreation system and levy an annual tax of 2½ mills therefor?

A city may create a park district pursuant to the provisions of N.D.C.C. ch. 40-49 by a two-thirds vote of its governing body at a regular meeting. N.D.C.C. § 40-49-02. You indicated that such an ordinance was passed by the governing body of the city of Valley City on April 18, 1917. N.D.C.C. ch. 40-49 does not specifically provide for the dissolution of a Park District. However a "[s]pecific grant of power to repeal ordinances . . . ordinarily is not necessary since it is the general rule that power to enact ordinances implies power, unless otherwise provided in the grant, to repeal them." 6 McQuillin, Municipal Corporations, § 21.10 (3rd ed. 1988). A city may repeal an ordinance only by an act of equal dignity and mode of enactment. 6 McQuillin, Municipal Corporations, § 21.13 (3rd ed. 1988). Thus, because the Park District was initially created by a two-thirds vote of the

governing body, the City Commission may dissolve the Park District by passing a new ordinance, by a two-thirds vote, which dissolves the Park District.

Another way to dissolve the Park District is for the electors of the Park District to refer the 1917 ordinance which created the Park District. If the procedures for referral of ordinances in Valley City's home rule charter have been implemented through ordinances, then those procedures would apply; otherwise, the procedures for referral of ordinances outlined in N.D.C.C. ch. 40-12 would apply.

Your concern about the following language: "The park district shall have . . . perpetual succession . . .", N.D.C.C. § 40-49-04, is unwarranted. Perpetual succession is defined as:

That continuous existence which enables a corporation to manage its affairs, and hold property without the necessity of perpetual conveyances, for the purpose of transmitting it. By reason of this quality, this ideal and artificial person remains, in its legal entity and personality, the same, though frequent changes may be made of its members.

BLACK'S LAW DICTIONARY 1027 (5th ed. 1979). The purpose of perpetual succession is to enable an entity to have continual existence, despite the fact that its members may change. The purpose of perpetual succession is not to prohibit the lawful dissolution of the entity.

For your information, if the Park District is dissolved, the City Commission will not have the authority given to park districts pursuant to chapter 40-49. The governing body of a city has the power to "exercise the same powers as are granted to a board of park commissioners respecting the parks of the municipality, if any, until the municipality has been organized into a park district." N.D.C.C. § 40-05-01(9) (emphasis added). In addition, "[a]ny municipality desiring to take advantage of [chapter 40-49, regarding parks and park districts] shall do so by an ordinance regularly adopted expressing such intent or desire." N.D.C.C. § 40-49-03. These statutes, read together, indicate that a city commission will not have the authority outlined in N.D.C.C. ch. 40-49 unless it creates a park district in accordance with that chapter.

If the city does not choose to avail itself of the provisions of N.D.C.C. ch. 40-49, the city does have the authority to run a public recreation system and may exercise any authority given to cities under other statutes which may be similar to provisions in N.D.C.C. ch. 40-59.

I trust I have responded to your questions.

Sincerely,

Nicholas J. Spaeth

las/vkk