

## **N.D.A.G. Letter to Ness (July 25, 1990)**

July 25, 1990

Mr. Gary R. Ness  
Director  
Aeronautics Commission  
P.O. Box 5020  
Bismarck, ND 58502

Dear Mr. Ness:

Thank you for your July 13, 1990, letter concerning the relation between a municipal airport authority and a home rule city.

Your first question is whether any of the mill levy collected for airport purposes can be used for non-airport purposes. N.D.C.C. § 2-06-07 states that upon creation of a municipal airport authority, the authority has "the power to certify, annually to the governing bod[y] which creat[ed] it, the amount of tax to be levied by that governing body for airport purposes." N.D.C.C. § 2-06-14 elaborates on this provision and requires each municipality to levy the amount certified to it by the airport authority "pursuant to provisions of law authorizing cities and other political subdivisions of this state to levy taxes for airport purposes." The proceeds from these taxes are to be deposited in a special account in which other airport authority revenues are deposited and expended by the authority "as provided for in this chapter." N.D.C.C. § 2-06-14.

The tax levy created by the airport authority and levied by the municipality pursuant to the provisions of N.D.C.C. ch. 2-06 can only be used for airport purposes. It may not be used for non-airport purposes. What constitutes airport purposes is a question of fact to be determined by the appropriate body responsible for expending the money. That issue brings me to your second question.

Your second question is whether the airport authority tax levy provided for by N.D.C.C. ch. 2-06 may be expended by the airport authority or by a home rule city when permitted by the home rule charter.

N.D.C.C. § 2-06-02 allows any city to create an airport authority by resolution. Once created, that airport authority is a "public body corporate and politic to be known as a municipal airport authority." In the alternative, the city may decide by resolution to exercise any or all of the powers granted to airport authorities by N.D.C.C. ch. 2-06 itself. The airport authority has the power to determine the amount of tax to be levied for airport purposes and is required by law to certify that amount annually to the governing body creating the authority. N.D.C.C. § 2-06-07. Furthermore, as noted previously, the proceeds from the tax levies are deposited in a special account which are to "be expended by the authority as provided for in this chapter." N.D.C.C. § 2-06-14.

On May 14, 1982, this office issued a letter opinion to the Glen Ullin city authority concluding that an airport authority is a public body separate from the city. I agree with that conclusion based upon the provisions of N.D.C.C. ch. 2-06. Assuming that the governing body creating the municipal airport authority has not retained any powers unto itself and has instead authorized the airport authority to exercise those powers provided to it pursuant to N.D.C.C. ch. 2-06, an airport authority and a municipality are separate political entities.

The municipal airport authority is authorized to expend airport authority tax levy moneys for airport purposes. The statute does not provide for a city exercising this authority when an airport authority exists. Thus, it is my conclusion that a city cannot expend airport authority tax levy moneys.

The existence of a home rule charter does not affect my conclusion. N.D.C.C. § 40-05.1-06 lists the powers of a home rule city. N.D.C.C. § 40-05.1-06(2) allows a home rule city to control its own finances and fiscal affairs and to appropriate money for its own purposes. However, as noted previously, an airport authority is a separate entity and is not considered a department or agency of the city. Assuming that the creation of the airport authority was unlimited and that a home rule city has not reserved within it any of the airport authority powers found within N.D.C.C. ch. 2-06, the existence of a home rule charter does not allow a home rule city to expend the airport authority tax levy moneys. Instead, only the airport authority can expend these moneys.

I hope this discussion is helpful to you and to the Wahpeton airport authority members.

Sincerely,

Nicholas J. Spaeth

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