

N.D.A.G. Letter to Peterson (Aug. 5, 1987)

August 5, 1987

Honorable James A. Peterson
North Dakota House of Representatives
516 8th Street N.W.
Minot, ND 58701

Dear Representative Peterson:

Thank you for your letter of April 23, 1987, inquiring whether Ward County may make an excess mill levy for payment to, and in support of, the North Dakota State Fair pursuant to 1987 N.D. Sess. Laws ch. 676, 7. Furthermore, you inquire whether such levy would be one-half mill or one mill. I apologize for the delay in responding to you .

The history of the North Dakota State Fair is somewhat as follows:

In 1920 the Board of Ward County Commissioners submitted to the electorate at a general election the proposition of a tax levy for a Ward County fair. Upon favorable approval of the electorate, that fair was organized, land acquired, and development and operation commenced.

Pursuant to 1923 N.D. Sess. Laws ch. 217, the Northwest Agricultural, Livestock and Fair Association was established and appropriation therefore made. On July 16, 1923, a deed for the land acquired by the Ward County fair was executed whereby title was passed in the name of the state of North Dakota. With respect to this name change, in Hadler v. Northwest Agricultural, Livestock and Fair Association, 239 N.W. 736, 740 (N.D. 1931), the North Dakota Supreme Court, in determining that the Northwest Agricultural, Livestock and Fair Association was a governmental activity, said:

When under the provisions of chapter 217, Sess. Laws 1923, it changed its name and form so as to receive state aid, there was no practical change in any of the respects above mentioned, neither as to ownership, control, operation, purpose, or with respect to the financial ends attained by it. The Legislature could abandon and discontinue it at any time it saw fit. While in operation, its property stood in the name of the state. If discontinued, its property was the property of Ward county.

Ward County continued to make a tax levy. In 1938, the Board of Ward County Commissioners brought an action in mandamus in district court against the Ward County auditor requiring the Ward County auditor to set up to the credit of the fair fund a sum of money, which action resulted in a

judgment ordering the issuance of the writ of mandamus in the action. In Olson v. Donnelly, 294 N.W. 666, 671 (N.D. 1940), an action to set aside the writ of mandamus, the North Dakota Supreme Court, in refusing a collateral attack upon the judgment, said:

The people of Ward County are represented by the county commissioners in the fiscal matters of the county and as managers of the Fair. . . .

The Ward County tax levies continued.

Pursuant to 1965 N.D. Sess. Laws ch. 73, there was created the North Dakota State Fair Association, and pursuant to section 17 of that Act, title to property obtained in regard to the operation was to be obtained and conveyed in the name of the state of North Dakota. By warranty deed dated April 7, 1966, recorded in the Office of the Register of Deeds of Ward County, North Dakota in Book 292 Deeds, page 260, title to all of the real property of the Northwest Agricultural, Livestock, and Fair Association was transferred to the North Dakota State Fair Association, with the following reservation:

[D]oes hereby Grant, Bargain, Sell and Convey unto the said party of the second part, its heirs and assigns so long as the same shall be used for the purpose of conducting an Annual North Dakota State Fair, all tracts or parcels of land . . . so long as the same shall be used for purposes of conducting an Annual North Dakota State Fair This deed is executed for the purposes set forth in Chapter 73 of the 1965 Session Laws of the State of North Dakota.

Contemporaneously with the foregoing deed, an agreement between these same parties was placed of record in the office of the register of deeds, Ward County, and recorded in Book 148 Misc. page 205 with respect to personal property and other matters. This agreement also provided for surrender of the real estate by quit claim deed to the Northwest Agricultural, Livestock, and Fair Association by the North Dakota State Fair Association in the event of discontinuance of the North Dakota State Fair. Thereafter Ward County, through 1972, continued to make tax levies for support of the North Dakota State Fair improvements.

In 1973, pursuant to the provisions of N.D.C.C. § Ch. 54-40, the North Dakota State Fair Association on behalf of the state of North Dakota, the city of Minot, and the County of Ward entered into an intergovernmental agreement to cause to be constructed on the North Dakota State Fair Grounds an indoor agricultural and livestock show facility, which became what is now known as the All Seasons Arena. On May 30, 1973, the Board of County Commissioners of Ward County adopted a resolution whereby Ward County would contribute \$400,000.00 from county revenue sharing funds towards the construction of the All Seasons Arena. Subsequently, Ward county under such resolution contributed a total of \$600,000.00 to such construction. In 1985, a second arena was constructed as an addition to the All Seasons Arena, and Ward County, participating in such addition, has made its payments thereon through 1987 in the total sum of

\$345,000.00. It is clear, therefore, that Ward County has at least a two-fold interest in the development of the North Dakota State Fair grounds; one of which is its reversionary interest and the second is a direct financial contribution continuing over the years since 1920.

1965 N.D. Sess. Laws ch. 67, provided, in part, as follows:

It is the further intent of the legislative assembly that such state fair shall be operated in such a manner that it shall be selfsustaining from its activities and from income from sources other than general appropriations from the general fund of the state treasury The funds . . . shall not become or remain available for expenditure unless the board of county commissioners of the county wherein the state fair is located shall levy not less than one-half mill under the provisions of section 4-02-27 and 4-02-27.1 for use of the county fair association of such county in the maintenance and improvements of fair grounds used by the state fair association for state fair purposes.

A letter opinion from the office of the North Dakota Attorney General dated November 4, 1965, stated, in part, as follows:

It is our view that so long as the deeds given by the county insure that all property given by Ward County to the State Fair Association will return to Ward County if the State Fair should ever pass out of existence, a levy made to support the physical plant of that fair, submitted to the people pursuant to Section 4-02-27 et. seq., would be valid and comply with House Bill No. 776 [Chapter 67 S.L. 1965]. Presumably the election that has been held to authorize the existing levy would be sufficient.

It is our view that House Bill No. 776 envisions the Ward County Fair Association and the North Dakota State Fair Association working in close connection to maintain the physical plant of the fair grounds used for the State Fair.

Letter from Special Assistant Attorney General Lynn E. Crooks to Ward County State's Attorney Richard Thomas (November 4, 1965) at 3.

At the time of the election held by Ward county in 1920, the applicable law in force would have been Section 1868 C.L. 1913 which subsequently became N.D.C.C. § 4-02-27. The election procedures had in 1920 would have been held under the provisions Compiled Laws of North Dakota, 1913, 1874. That section contained the following proviso:

[B]ut the result of any election held under the provisions hereof shall remain in force until changed at some subsequent election held hereunder.

That section thereafter became N.D.C.C. § 4-02-30, and the immediately preceding quoted language was subsequently deleted. However there was substituted therefore a right on the part of the electors to petition for an election to terminate the power and authority of the Board of County Commissioners to make the mill levy. It is our understanding that no subsequent petition has ever been filed, and no subsequent election ever held.

Accordingly, it is our view that the Board of Ward County Commissioners still has the authority to make an appropriate levy for fair purposes. Since N.D.C.C. § 4-02-27.1 did not come into existence until 1955, it is our conclusion that, as a matter of law, the Ward County Fair Association was created under what is now N.D.C.C. § 4-02-27. Because of that conclusion, it is now our view that the Ward County Board of Commissioners may levy a tax not exceeding one mill as an excess mill levy for the purpose of advancing and promoting the North Dakota State Fair Association, pursuant to 1987 N.D. Sess. Laws ch. 676, 7, making payment to the North Dakota State Fair Association as the successor entity to the Ward County Fair.

Sincerely,

Nicholas J. Spaeth

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cc: Hugh McCutcheon