

N.D.A.G. Letter to Larson (Aug. 20, 1986)

August 20, 1986

Mr. Stuart A. Larson
Traill County State's Attorney
P.O. Box 188
Hillsboro, ND 58045

Dear Mr. Larson:

Thank you for your letter of August 8, 1986, concerning the manner in which territory may be withdrawn from a fire protection district.

N.D.C.C. §18-10-12.1 provides the procedure that must be followed in having territory withdrawn from a fire protection district. N.D.C.C. §18-10-12.1(4) states that the initiation of a withdrawal occurs by a petition filed with the appropriate county auditor or auditors signed by the fee title holders of 60% "of the surface acreage in the territory sought to be withdrawn, and contain a description of the boundaries of the territory sought to be withdrawn and a map or plat illustrating such area." N.D.C.C. §18-10-12.1(1) requires the territory to be withdrawn from the district to "border on the outer boundary of the district."

In the factual situation described in your letter, the essential question appears to be the scope of the term "territory." If territory means individual sections of land, a petition which attempts to withdraw land from the rural protection fire district which contains sections not bordering on the outer boundary of the fire district may be in violation of the above statute.

However, our review of N.D.C.C. §18-10-12.1 concludes that the Legislature has not expressed any intention to restrict or limit the scope of the word "territory" as it is used throughout this statute. We are unable to determine any legislative intent that territory be restricted to a section of land or, for that matter, any portion of a section of land. Instead, since the statute provides for the withdrawal initiation by the filing of a petition containing a certain number of signatures of the surface area contained within "the territory" sought to be withdrawn, the only conclusion to be reached is that the territory is that amount of land which is described in the petition. The territory may be as small as a portion of a section or may include several sections as the example described in your letter.

With this conclusion in mind, the limitation of N.D.C.C. §18-10-12.1(1) requiring that the territory to be withdrawn must border on the outer boundary of the district refers to the territory described within the petition as opposed to a particular section of land or any portion thereof. Thus, we would agree with counsel for the petitioners in the case described in your letter if the petition initiating this withdrawal contains the required number of signatures from persons owning land within the nine sections of land apparently described within the petition. As this block of sections constitutes the "territory"

as that term is used throughout N.D.C.C. §18-10-12.1, it would appear to border the outer boundary of the fire protection district and is eligible for withdrawal.

Sincerely,

Nicholas J. Spaeth

ja