

**N.D.A.G. Letter to Sperry (Nov. 7, 1986)**

November 7, 1986

Mr. James E. Sperry  
Superintendent  
State Historical Society of North Dakota  
North Dakota Heritage Center  
Bismarck, ND 58505

Dear Mr. Sperry:

Thank you for your letter of September 26, 1986, in which you ask several questions regarding the 1883 Stutsman County Courthouse.

On November 25, 1985, the State Historical Board received a quitclaim deed from Stutsman County. That deed purported to transfer the interest of Stutsman County in the 1883 Courthouse to the State Historical Board of the State Historical Society. On January 9, 1986, I issued an opinion regarding the legal obligations of the State Historical Board concerning the acceptance of the deed to the Stutsman County Courthouse. In that opinion I stated that the State Historical Board has the authority to accept a quitclaim deed to the county-owned property but that the Board is not obligated to accept the deed. According to your most recent letter, the Stutsman County Commissioners have once again submitted to the State Historical Board, a quitclaim deed to the 1883 Stutsman County Courthouse.

You have requested my opinion on five different questions. The first question is whether the Stutsman County Commission has the legal authority to make a voluntary transfer without consideration of its interest in the 1883 Stutsman County Courthouse to the State Historical Board or to any other entity by a quitclaim deed.

The board of county commissioners of any county may dispose of any property, either real or personal, which the county has acquired through purchase, forfeiture, or operation of law other than through tax sale proceedings, in accordance with N.D.C.C. Ch. 11-27. When the property to be disposed of is estimated by the board to be a value of less than \$1,000, it may be sold at private sale upon the proper resolution of the board. In all other cases, such property may be sold only at public sale. N.D.C.C. § 11-27-01. Therefore, the Stutsman County Commissioners have the authority to dispose of their interest in the Stutsman County Courthouse pursuant to the provisions of N.D.C.C. Ch. 11-27.

The question becomes a factual one. If the property to be disposed of is worthless, then the county commissioners may transfer it without consideration. If it is worth \$1,000 or less, it may be sold privately. Property worth more than \$1,000 must be sold at a public auction or sale.

In addition, if the property has been donated to the county for a special purpose and has not been used for that purpose for a period of one year or more, N.D.C.C. § 11-27-10 provides that the board of county commissioners may convey the property back to the donor or his heirs or assigns "for a nominal consideration" if the donor or his heirs or assigns demand conveyance.

The second question of your letter is whether "benign neglect" which contributes to the deterioration of the physical features of a site owned by an instrumentality of government and listed in the State Historic Site's registry can be considered as causing alteration of the condition of that site as referred to in N.D.C.C. § 55-10-08(2). The word alter as used in this statute is not defined nor is it defined by the courts of North Dakota. Words used in any statute are to be understood in their ordinary sense. N.D.C.C. § 1-02-02. Alter has been defined as to change or make different; modify. American Heritage Dictionary (New College Ed. 1982) at 37.

Whether benign neglect as referenced in question 2 can be considered alteration for purposes of N.D.C.C. § 55-10-08(2) is a question of fact on which I am unable to issue an opinion. As Attorney General, I may only issue opinions as to questions of law and cannot issue opinions as to questions of fact. Thus, I would defer to the judgment of the State Historical Board as to whether the facts would indicate the physical features or historical character of this site has been altered.

The third question of your letter asks whether the Stutsman County Commission's refusal to negotiate an administrative agreement with the State Historical Board for the 1883 Stutsman County Courthouse can be considered a failure to cooperate with the Board "in identifying and implementing any reasonable alternative to demolition or alteration" as is provided in N.D.C.C. § 55-10-08(2). As with the previous question, I cannot issue an opinion on this question because it deals with a question of fact. I would again defer to the Board's judgment on this issue.

The fourth question in your letter refers to the responsibilities of a governmental entity concerning the maintenance of the structure placed on the North Dakota Historic Sites registry. An examination of the North Dakota Century Code reveals that governmental entities including counties are required to cooperate with the superintendent of the State Historical Board in safeguarding the state historic sites and the preservation of historic and archeological sites. N.D.C.C. § 55-10-09. However, further examination of the North Dakota Century Code does not reveal an affirmative duty by counties to maintain county property. It appears that that duty is left to the discretion of the county commissioners.

The last question of your letter asks what actions can be taken to ensure compliance with the statutes. I must assume that the statutes to which you refer are the statutes referring to the State Historic Sites registry. N.D.C.C. Ch. 55-10. There does not appear to be a specific penalty provision listed in N.D.C.C. Ch. 55-10. At best, the State Historical Society could pursue an action for writ of mandamus against a governmental entity requiring them to maintain their building in a manner which would not cause harm or alter the building in any manner under the authority of N.D.C.C. § 55-10-09 which requires local governmental

subdivisions to "cooperate" with the superintendent of the State Historical Board in safeguarding and preserving historic sites. The extent to which local governmental entities must "cooperate" is again a factual question which I am unable to answer.

Sincerely,

Nicholas J. Spaeth

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