

N.D.A.G. Letter to Howard (Nov. 29, 1990)

November 29, 1990

Representative John M. Howard
District 14
295 First Street N
Carrington, ND 58421

Dear Representative Howard:

Thank you for your November 14, 1990, letter requesting my opinion concerning an exchange of property between two residents in different school districts.

Proceedings for an exchange of property conducted under North Dakota Century Code § 15-27.2-02 must comply with the other provisions of N.D.C.C. ch. 15-27.2 unless a different requirement applies under N.D.C.C. § 15-27.2-02. N.D.C.C. § 15-27.2-01 provides that upon petition of two-thirds of the qualified electors in the contiguous territory which is to be annexed, the county committee must accept the petition and begin the proceedings for annexation if the petition is otherwise proper. You ask whether N.D.C.C. § 15-27.2-01 applies to an exchange of property conducted pursuant to N.D.C.C. § 15-27.2-02.

N.D.C.C. § 15-27.2-02 provides an alternative mechanism whereby a resident need not comply with the requirement of N.D.C.C. § 15-27.2-01 that the signatures of two-thirds of the qualified electors must be obtained. The two-thirds requirement in N.D.C.C. § 15-27.2-01 must be obtained from the qualified electors residing in the territory to be annexed. In the case of an exchange of property under N.D.C.C. § 15-27.2-02, the number of qualified electors residing in the territory to be annexed is very small. It is likely that no more than a few qualified electors live in the territory sought to be annexed. Thus, it is unlikely that the two-thirds requirement in N.D.C.C. § 15-27.2-01 was intended to apply to territories sought to be annexed by an exchange of property.

Additionally N.D.C.C. § 15-27.2-02 provides "[e]xcept as provided in this section, the proceedings in this section are subject to the other provisions of this chapter applicable to annexation proceedings generally." N.D.C.C. § 15-27.2-02 states specific requirements regarding an exchange of property including the type of approval required from the affected persons. The requirement in N.D.C.C. § 15-27.2-01 that two-thirds of the qualified electors must sign the petition is also a requirement for approval of the affected persons. Because N.D.C.C. § 15-27.2-02 addresses this issue, the requirement in N.D.C.C. § 15-27.2-01 regarding the type of approval required for the affected persons, a petition signed by two-thirds of the qualified electors, does not apply.

For the reasons discussed, it is my opinion that the signatures of two-thirds of the qualified electors as required in N.D.C.C. § 15-27.2-01 need not be obtained to exchange property

pursuant to N.D.C.C. § 15-27.2-02.

I trust this answers your question.

Sincerely,

Nicholas J. Spaeth

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