

N.D.A.G. Letter to Larson (Dec. 2, 1988)

December 2, 1988

The Honorable Rod Larson
House of Representatives
District 13
36 Park Drive
Riverside, ND 58078

Dear Representative Larson:

Thank you for your letter of November 17, 1988, in which you requested an interpretation of N.D.C.C. § 40-53.2-03 concerning the consolidation of cities.

The provisions of N.D.C.C. § 40-53.2-03 indicate that a municipal consolidation review commission shall be established upon approval of a "simple majority" of the votes cast by the voters of those cities seeking consolidation. The statute further states that upon receiving a "majority" affirmative vote of the electors of each city, the commission's recommended consolidation plan shall become effective on July 1 of the next year. Your question is whether the terms "simple majority" and "majority" are synonymous. If the terms are not synonymous, you inquire whether the term "majority" refers to a super or 60% majority because of the use of the term "simple majority" within the same statute.

It is not clear from the language of N.D.C.C. § 40-53.2-03 whether the Legislature intended any distinction between the terms "simple majority" and "majority". However, upon review of the legislative history, there is no doubt that the Legislature did not intend to impose any special requirement by using the term "simple majority".

N.D.C.C. § 40-53.2-03 was enacted by the 1981 Legislative Assembly in Senate Bill 2083. In its 1981 report to the North Dakota Legislative Council, the interim political subdivisions committee described the provisions of N.D.C.C. § 40-53.2-03 as follows:

If a majority of the voters of each city seeking consolidation choose to do so, they may direct the governing body of that city to appoint a number of its members to meet with the members of the governing body of the other cities seeking consolidation, to formulate a plan for consolidation. The consolidation plan must then be approved by a majority of the voters of each city in order to become effective.

1981 Report of the North Dakota Legislative Council at 114. As this report shows, only a majority of voters is required to cause the formulation of a consolidation committee and later to approve a consolidation plan.

Furthermore, when Senate Bill 2083 was heard by the Senate Political Subdivisions

Committee on January 15, 1981, the 1981 report of the North Dakota Legislative Council, quoted above, was repeated and included within the bill's legislative history. Hearing on S.2083 Before The Senate Committee on Political Subdivisions, 47th Leg., Jan. 15, 1981 (statement of Rep. Mertens).

It should also be noted that when the North Dakota Legislative Assembly has deemed it appropriate to require more than a majority vote, it has specifically so required. For instance, N.D.C.C. § 11-08-05 addresses the consolidation of forms of government at the county level and states, in part, as follows:

11-08-05. Vote required -- Change effective -- When elective officers retired. If fifty-five percent of the votes cast on the question of the adoption of the county consolidated form of government are in favor thereof, it shall go into effect on the first day of January next succeeding such election.

(Emphasis supplied.) In another instance, N.D.C.C. § 57-17-01 provides that the governing body of any county, city or township may, by a two-thirds vote of all its members, increase taxes to the maximum rate authorized by chapter 57-15. N.D.C.C. § 57-17-05 states that 60% of votes cast is needed to authorize an excess levy of taxes.

In North Dakota the use of the term "majority" refers to an amount more than half of any total. Gallaher v. City of Fargo, 64 N.W.2d 444, 448 (N.D. 1954). That definition must be invoked in interpreting the provisions of N.D.C.C. § 40-53.2-03 where the term "majority" appears. The use of the term "simple majority" does not appear to refer to any number other than a majority as previously defined. The applicable legislative history discussed above supports this conclusion as well as the fact that where the Legislature has intended to require a specific number beyond a majority, the Legislature has specifically done so.

I hope this information has been helpful.

Sincerely,

Nicholas J. Spaeth

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