

May 4, 1970 (OPINION)

Mr. Richard B. Thomas

State's Attorney

Ward County

RE: Counties - Weather Modification - Authority

This is in reply to your letter of April 28, 1970, relative to Chapter 2-07 of the North Dakota Century Code, as amended, establishing a weather modification act. You state the following facts and questions:

- 1) Section 2-07-08 requires bids be taken where the contract exceeds \$10,000.00 per year. The statute states that the county commissioners shall advertise for bids in the manner required by the laws of the state, and the county commissioners shall enter into no contract, except with a licensed controller. This would imply to me that the commissioners have vested authority over the Weather Modification Authority, insofar as contracts are concerned and would be the agency accepting or refusing bids for services. We would like your concurrence or modification of this assumption.
- 2) Does the Authority have the power to appoint a treasurer to receive all funds for its use, or would such funds involved be deposited with the Ward County treasurer?
- 3) Other than provided for in Section 2-07-07, does the Weather Modification Authority have power to borrow money against its anticipated tax levy income through certificates of indebtedness? This office has not passed its opinion on this question.
- 4) Is the Ward County Weather Modification Authority a separate entity of Ward County or a functional department of the county, such as the Ward County Highway Department, Ward County Veterans' Service Department, etc.?
- 5) Also does governmental immunity apply to the Weather Modification Authority as an adjunct of Ward County and in effect a governmental entity."

Your questions will be considered in the order presented.

1. There may be some conflicts in the provisions now found in Chapter 2-07. The Act was originally enacted in 1965. At the time, no provision was made for creation of a weather modification authority at the county level. The weather modification activities, if the mill levy for such activities was approved by the electors of the county, were to be managed by the board of county commissioners. The

1969 Act (Chapter 82, 1969 Session Laws) added certain provisions to the Act, i.e., section 2-07-06.1 through section 2-07-06.3, as well as amending section 2-07-06 and section 2-07-07. The amendments and additions provide for the creation of a weather modification authority of five commissioners. Section 2-07-06.2 provides "the power of each weather modification authority shall be vested in the commissioners thereof." However, the 1969 Act did not amend section 2-07-08, which specifically requires the county commissioners to award contracts in excess of ten thousand dollars. There are apparently some conflicts between these two provisions. Under the rules of statutory construction a special provision supersedes a general provision. In this instance section 2-07-06.2 is a general provision concerning the powers of the weather modification authority commissioners, whereas section 2-07-08 is a specific statute dealing with contracts of over ten thousand dollars. We are also aware under the rules of statutory construction that if two statutes cannot be reconciled, the statute enacted later supersedes that enacted prior thereto. This rule encompasses the theory of implied amendment or repeal of the previously enacted statute. However, the courts frown upon an implied repeal or amendment, and generally will construe the statutes together if at all possible.

It appears to us that the two statutes may be construed together. Thus, we believe the general authorities to be exercised by the weather modification authority are to be exercised by the five commissioners appointed as required in section 2-07-06. However, in those instances in which contracts with any licensed controller in an amount in excess of ten thousand dollars in any one year are made, such contracts must be let by the board of county commissioners after advertisement as required in section 2-07-08.

2. Section 2-07-06.2, enacted in 1969, gives the weather modification authority the power to elect a chairman and a vice-chairman from among its members. It also gives the authority the power to "employ such other officers, agents, and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation."

Thus, the section also provides, for example, that minutes shall be kept by the secretary of official meetings although the section does not specify that a secretary shall be appointed. We, therefore, assume the authority may appoint a treasurer. However, we find no provision authorizing the funds raised by taxation to be turned over to the authority. Therefore, we assume the tax funds, at least, would be deposited with the Ward County Treasurer in a special fund for weather modification purposes. Section 2-07-06.3, enacted in 1969, provides for such levy by the board of county commissioners after certification by the weather modification authority but does not provide that such funds are to be handled differently than other county levies made for a special

purpose. We are aware that section 2-07-06, as amended in 1969, provides that after expiration of the weather modification authority and unexpended funds shall be transferred to the county general fund by the officers of the weather modification authority. It may be argued this implies the funds are to be credited to the authority. However, in view of the fact there is no specific provision providing for the deposit of the funds other than with the county treasurer, we must assume this refers only to the fact that such funds must be deposited to the county be managed by the board of county commissioners. The 1969 Act (Chapter 82, 1969 Session Laws) added certain provisions to the Act, general fund, after expiration of the weather modification authority, rather than in a special fund. We assume such funds must be expended in the manner other county funds are expended, including vouchers presented to the county commissioners by the authority, approval by the county commissioners, etc. Except with regard to the contracts specified in section 2-07-08, the authority would determine the expenditure of the funds as do other county agencies.

3. The tax levy must be considered a county levy since it is made by the county commissioners. As such we believe the county may issue certificates of indebtedness as provided by Chapter 21-02 of the North Dakota Century Code. The certificates would, necessarily, have to be issued by the county rather than by the weather modification authority under the provisions of Chapter 21-02.
4. This is a rather general question and a general answer may not be of any particular assistance since it would appear the nature of the authority must be considered in the perspective of a specific question. It would appear the authority has the attributes of a separate entity as well as a department of the county. It appears some attempt may have been made to model the weather modification authority after the airport authority authorized by Chapter 2-06. However, some important elements are missing. As an example, section 2-06-02 provides that a municipality may create a "public body corporate and politic to be known as a municipal airport authority..." In the case of airport authorities it is clear they constitute, for all practical purposes, a separate entity. In the case of weather modification authorities, no such provisions are made.
5. Section 2-07-10 of the North Dakota Century Code, as amended, provides as follows:

LIABILITY. Nothing in this chapter shall be construed to impose or accept any liability or responsibility on the part of the state of North Dakota or any of its agencies, or any state officials or state employees or county commissioners or county employees, for any weather modification activities of any person or licensed controller as defined in this chapter."

Under the provision of section 2-07-10 of the North Dakota Century Code the authority would probably be considered an agency of the

county and the county does, of course, have governmental immunity with regard to tort actions. The licensed controller with whom the county might contract would have no immunity.

HELGI JOHANNESON

Attorney General