

OPINION
73-41

November 30, 1973 (OPINION)

Mr. S. Lee Vinje
City Attorney
Goose River Bank Building

Mayville, ND 58257

Dear Mr. Vinje:

This is in response to your letter in which you ask for an opinion on the following:

"The City of Mayville is presently seeking annexation by resolution of an area considered to be contiguous to the City. The area sought to be annexed contains a number of residential homes privately platted as 'Westwood Acres.' In addition to this portion, the area sought to be annexed contains a golf course owned by the Mayville City Park Board and a school site for the new Mayville-Portland High School.

"Section 40-51.2-07(3) states, 'In absence of protests filed by owners of more than one-fourth of the territory proposed to be annexed * * * '. The question is then, may the City in determining sufficiency of protests, count the territory owned by the Park District and the School District in computing whether or not 25 percent of the owners have protested such annexation? In this instance, the silence of the two public bodies would ensure annexation since they own over 75 percent of the land to be annexed."

The last unnumbered paragraph of Section 40-51.2-07 provides as follows:

"If the owners of one-fourth or more of the territory proposed to be annexed protest, the city may seek annexation by petition to the Annexation Review Commission as hereinafter provided."

Subsection 3 of the same section also in part provides "In the absence of protests filed by the owners of more than one-fourth of the territory proposed to be annexed * * *", the city may annex the area in question.

It is significant to note that the foregoing provisions relate to owners of the territory. In this respect, we also note that the term "owners" is not qualified nor is the term "territory" qualified. The territory is not limited to territory which would be subject to taxation as is the case in some of the other states.

It is further observed that Section 40-51.2-03 uses the following expression: "Upon a written petition signed by not less than three-fourths of the qualified electors or by the owners of not less than three-fourths in assessed value of the property in any territory. * * *" In a somewhat similar tone, Section 40-51.2-04

provides as follows: "Upon a petition signed by not less than three-fourths of the qualified electors and by the owners of not less than three-fourths in assessed value of the property * * *."

Reference to the foregoing sections is made only for the purpose of pointing out the distinctions that have been made by the Legislature and that if the legislature had intended to put a limited or qualified meaning on the term, owners or territory, it most likely would have done so.

The term "owner" is defined in Webster's Dictionary as follows: "One who owns; the rightful proprietor; one who has the legal or rightful title, whether he is the possessor or not." It is found that an owner is one who has an ownership. Section 47-01-01 defines ownership as follows: "The ownership of a thing shall mean the right of one or more persons to possess and use it to the exclusion of others. In this code the thing of which there may be ownership is called property."

The Wisconsin Supreme Court, in *Town of Menasha v. City of Menasha*, (Banta annexation) 168 N.W.2d. 161, had under consideration a related question which touched upon the question whether or not property owned by a governmental body would be entitled to protest or vote in favor of annexation. The Wisconsin statute did not define an owner other than a person or entity who was the holder of record of an estate in possession in fee simple, or for life, in land or real property, etc. Similarly, as the North Dakota Act, it contained no limitations or qualifications. The court concluded that neither the state, county, nor any other public body is excluded as an owner. The same ruling, decision, or conclusion would apply to the North Dakota statute in question.

It is therefore our opinion that in annexation proceedings any property owner, whether it be state, county, city or any other governmental agency would be entitled to participate in annexation proceedings and vote either for or against annexation or file protests as the case may be.

I trust this answers your inquiry.

Sincerely yours,

ALLEN I. OLSON

Attorney General