

OPINION
74-229

October 9, 1974 (OPINION)

Mr. Vincent A. LaQua
State's Attorney
Wells County
Fessenden, ND 58438

Dear Mr. LaQua:

This is in response to your letter of October 4, 1974, with regard to procedure for abolishment of a weather modification authority.

You inform us that weather modification authority for your county was created pursuant to petition of 51 percent of the qualified electors of your county dated October 29, 1973, pursuant to the provisions of section 2-07-06 of the North Dakota Century Code.

You inform us that on October 1, 1974, at 3:00 p.m. there was filed in the office of the county auditor a petition bearing 897 signatures, the heading of which petition reads as follows:

We the undersigned, taxpayers and owners of a property lying in Wells County, North Dakota, feel aggrieved by a levy of taxes to support a weather modification program do hereby petition the Board of County Commissioners to discontinue the tax levy for support of weather modification on the Board's own initiative or that the Board submit the issue of whether or not the County should levy taxes for weather modification to a vote of the people at the General Election to be held on November 5, 1974.

You indicate that the number of votes cast for the office of governor in the last preceding general election in your county was 3968. You point out that 51 percent of that number would be 2024. You state that as the number of signatures on the petition was 807 that it would be only slightly in excess of 20 percent of the votes cast for governor in the last general election. You state that in such situation it would appear that the petitioners are asking for abolishment pursuant to the provisions of section 2-07-06.7 of the North Dakota Century Code. You state that the petition filed on October 1, 1974, requests in the alternative that the county commissioners discontinue the weather modification tax levy on its own initiative, or that the question of whether or not to levy the tax be submitted to the voters at the November 5, 1974, general election.

You gave us you authorities and arguments.

Your questions are stated as follows:

1. Is the petition filed with the county auditor on October 1, 1974, bearing the signatures of 807 signatures requesting abolishment of the weather modification authority created under section 2-07-06 sufficient to cause the county

commissioners to either abolish the authority by resolution, or place the question of abolishment on the ballot for the November 5th general election.?

2. Do you agree that an authority created under section 2-07-06 can be abolished only as provided in section 2-07-06.5?
3. You will note that the hearing of the petition as set forth at the bottom of page 1 of this letter does not conform to the heading requirements as set forth in section 2-07-06.5. Do you agree that the heading of the petition does not meet the legal requirements and that therefore the petition is not sufficient?"

Our response to you first question is no.

Our response to your second question is yes.

Our response to the first sentence of your third question is in the affirmative. In response to the second sentence of your third question we would agree that on the basis of the information you have submitted, the heading of the petition does not meet the legal requirements. While your letter does not include a copy of the petition, a telephone call to your county auditor would indicate that much of the information called for by section 2-07-06.5 and therefore subsections 4, 5, and 6 of section 2-07-06 is not only not contained in the heading of the petition and is further not anywhere specified in the body of the petition or the circulator's statement. (While it would apparently indicate that the circulator was qualified to circulate the petition, it does not indicate that the signatories were qualified to be signatories thereto). We would note that under either section 2-07-06.5 or 2-07-06.7 the requirement is for a percentage of the "qualified electors" of the county. While it is conceivable that "taxpayers and owners of property" could also be "electors", the terms are not synonymous and the indication that they are "taxpayers and property owners" does not indicate that they are either qualified electors or voters of the county, or have a county residence.

We would further mention that section 2-07-06.7 of the 1973 Supplement to the North Dakota Century Code by its own terms applies to "the abolishment of a weather modification authority as created in section 2-07-06.4 and 2-07-06.6" of the 1973 Supplement to the North Dakota Century Code (emphasis is supplied by us). On such basis we agree that same would have no application to a weather modification authority created pursuant to section 2-07-06 of the 1973 Supplement to the North Dakota Century Code. The statutory provision for the abolishment of a weather modification authority created by section 2-07-06 of the 1973 Supplement to the North Dakota Century Code is that specified by section 2-07-06.5 of the 1973 Supplement to the North Dakota Century Code as applying to authorities created "by section 2-07-06".

We hope the within and foregoing will be sufficient for your purposes.

Sincerely yours,

Allen I. Olson

Attorney General