

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 91-05

Date issued: March 13, 1991
Requested by: James T. Odegard
Grand Forks County State's Attorney

- QUESTIONS PRESENTED -

I.

Whether a township can split mill levies levied for an airport authority between two different airport authorities.

II.

Whether a township may withdraw its financial support of a regional airport authority without the consent of the other municipalities included in the regional authority and the commissioners of the regional authority.

- ATTORNEY GENERAL'S OPINION -

I.

It is my opinion that a township cannot split mill levies levied for an airport authority between two different airport authorities.

II.

It is my further opinion that a township may not withdraw its financial support of a regional airport authority without the consent of the other municipalities included in the regional authority and the commissioners of the regional authority.

- ANALYSIS -

I.

The Legislative Assembly enacted N. D. C. C. " 57-15-37.1 and 58-03-07(19) in 1979. 1979 N. D. Sess. Laws ch. 593. These provisions provide:

57-15-37.1. Township levy for airport purposes The electors of each township may vote at the annual meeting to levy a tax for the purpose of supporting an airport or an airport authority in an amount not exceeding the limitation in subsection 6 of section 57-15-20.2. The tax levy provided in this section shall not apply to any city, park district, or other taxing district that already has an airport levy.

58-03-07. Powers of electors. The electors of each township have the power at the annual township meeting:

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19. To support an airport or to support or create an airport authority and to levy a tax for airport purposes within the limitations of section 57-15-37. 1.

(Emphasis supplied.)

To resolve the issue of whether under these provisions a township can split the mill levies levied for an airport authority between two different airport authorities, it is necessary to resort to the rule of construction regarding the use of the disjunctive word "or." 1A N. Singer, Sutherland Statutory Construction ' 21.14 (4th ed. 1985 rev.). This rule has been followed by the North Dakota Supreme Court in Heartview Foundation v. Glaser, 361 N.W.2d 232, 234 (N.D. 1985). The rule provides that although the "use of the disjunctive 'or' usually denotes the existence of alternatives [it] is not followed when the legislative intent is clearly contrary." (Citation omitted.)

In this case the legislative history does not reveal a "clearly contrary" intent to use the word "or" in a conjunctive manner. The testimony of the North Dakota State Aeronautics Commissioner, Harold Vavra, was typical of a preponderance of the testimony before the Political Subdivisions Committee.

Harold G. Vavre, (sic) Bismarck, North Dakota State Aeronautics -- I rise in support of the bill. I'd like to discuss a few things that came up on the senate floor. Basically townships have the authority by law to own and operate airports and the authority to create a township airport authority or combine a township with a city authority, and have a regional authority.

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Rep. Kennelly (to Vavra) (sic) Would this have any effect on the Fargo airport? Also wasn't there an amendment to this bill?

Vavra (sic) No amendments. There would be no affect on Fargo from the bill in the present form.

Hearings on S. 2449 before the House Committee on Political Subdivisions, 46th Leg. (March 1, 1979). (Emphasis supplied.)

Because the word "or" appears in this legislation in its usual disjunctive usage, it is my opinion the electors of a township may choose to levy a tax to support either an airport authority, whether local or regional, or a local airport facility, but may not elect to split mill levies to support two

different entities.

II.

A political subdivision "may speak and act only in the manner and on the matters prescribed by the Legislature in statutes enacted pursuant to constitutional authority." County of Stutsman v. State Historical Society, 371 N. W. 2d 321, 329 (N. D. 1985); Dornacker v. Olson, 248 N. W. 2d 844, 849-850 (N. D. 1976).

A regional airport authority exists and operates under the provisions of N. D. C. C. ch. 2-06. A township (which is defined as a municipality under N. D. C. C. ch. 2-06) may elect to participate as part of a regional airport authority. N. D. C. C. " 2-06-01(9), 2-06-03, 57-15-37.1, and 58-03-07(19).

If a township decides to withdraw from a regional airport authority, the requirements of N. D. C. C. ' 2-06-03(3) must be met as follows:

A regional airport authority may be decreased if each of the municipalities then included in the regional authority and the commissioners of the regional authority consent to the decrease and make provisions for the retention or disposition of its assets and liabilities; provided that, if the regional authority has any bonds outstanding no decrease may be effected unless one hundred per centum of the holders of the bonds consent thereto in writing.

N. D. C. C. ' 2-06-03(3).

Under these provisions, a township may not withdraw its financial support of a regional airport authority without the consent of the other municipalities included in the regional authority and the commissioners of the regional authority.

- EFFECT -

This opinion is issued pursuant to N. D. C. C. ' 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.

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