

LETTER OPINION
94-L-276

October 17, 1994

Ms. Jeanne L. McLean
Bottineau County State's Attorney
P.O. Box 26
Bottineau, ND 58318-0026

Dear Ms. McLean:

Thank you for your September 12, 1994, letter asking two questions concerning recreation service districts.

Your first question is whether a biking and hiking trail could "be considered 'improvement of environmental quality' and therefore be levied for?"

The powers of recreation service districts are defined in N.D.C.C. ch. 11-28.2. Section 11-28.2-01 states that recreation service districts may be established, among other purposes, "for the improvement and control of the environmental quality" of the district. Section 11-28.2-04 states that districts have authority, among other things, "to provide for the improvement and control of the environmental quality of the recreation service district, and to levy special assessments as may be necessary to provide such services." This section goes on to require that such services first be approved by a majority of the qualified voters of the district.

Nowhere in chapter 11-28.2 is "environmental quality" defined. There are no reported judicial decisions interpreting the phrase as it is found in chapter 11-28.2. Nor does anything in the legislative history of chapter 11-28.2 explain its meaning. Therefore, "environmental quality" should be given its ordinary meaning. N.D.C.C. ? 1-02-02; Christianson v. City of Bismarck, 476 N.W.2d 688, 690 (N.D. 1991).

The term "environment" embraces not only the natural

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environment but "also the human environment - the health, social and other man-made conditions affecting a human being's place on earth." William Rogers, Jr., Handbook on Environmental Law 1 (1977). "'Our physical nature, our mental health, our culture and institutions, our opportunities for challenge and fulfillment, our very survival - all of these are directly related and affected by the environment in which we live.'" Id. at 2 (quoting Council on Environmental Quality, First Annual Report vi (1970)).

"'Environment' means something more than rocks, trees, and streams, or the amount of air pollution. It encompasses all the factors that affect the quality of life . . ." Jones v. United States Department of Housing and Urban Development, 390 F.Supp. 579, 591 (E.D. Louis. 1974).

With this understanding of the term "environment," it is my opinion that the board of a recreation service district could conclude that a biking and hiking trail will improve the "environmental quality" of the district and, therefore, levy an assessment to provide for one.

In your second question you ask, assuming a district can levy for a biking and hiking trail, whether the voters of the district can "petition by a certain number of voters (and therefore force) the Lake Metigoshe Recreational Service District to assess the levy?"

Since there is not a common law rule or general principle of law that allows the electorate of a political subdivision to force its governing board to levy a special assessment, and since there is no specific statutory authority allowing the voting members of a recreation service district to do so, it is my opinion that the voters of the Lake Metigoshe Recreational Service District cannot file a petition with the district board and thereby force it to assess a levy for the construction of a biking and hiking trail. I note that N.D.C.C. ch. 40-12 provides for

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initiative and referendum with regards to certain cities. If the Legislature had intended to provide initiative and referendum rights to the voters of recreation service districts, it would have done so specifically.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

cmc/dmm