

LETTER OPINION
94-L-16

January 20, 1994

Mr. James T. Odegard
Grand Forks County State's Attorney
PO Box 607
Grand Forks, ND 58206-0607

Dear Mr. Odegard:

Thank you for your letter requesting my opinion on a proposed division of an organized township under North Dakota Century Code ? 58-02-19.

You indicated that residents of a particular civil township in Grand Forks County have submitted a petition for the division of the township pursuant to N.D.C.C. ? 58-02-21. You also indicated that the township does not include a fractional township which borders on a lake or river. It is my understanding that this civil township consists of only one congressional township, i.e., a single six mile square territory surveyed by the United States government. See 56 Am. Jur. 2d Municipal Corporations ? 7.

The creation and division of townships generally is governed by N.D.C.C. ch 58-02. N.D.C.C. ? 58-02-19 provides as follows:

Division of organized township - Requirements.

A fractional township which contains more than eighteen sections of land and borders on a lake or river or any congressional township may be set off from the civil township of which it is a part if:

1. There are one hundred or more inhabitants residing in the proposed township; and

2. The division does not leave less than one hundred inhabitants residing in the township from which it is separated.

You ask the meaning of the terms "congressional township" and "civil township" as these terms are used

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in N.D.C.C. ? 58-02-19.

As you note, the terms "congressional township" and "civil township" used in section 58-02-19 are not defined by statute. However, the United States Supreme Court in Weightman v. Clark, 103 U.S. 256, 260(1880) noted that "[a] congressional township is one of the principal subdivisions which Congress has provided for in the survey of the public lands of the United States for the purposes of entry and sale. It is not necessarily a political subdivision of a State or of a county."

There are a number of references to the term "congressional township" in N.D.C.C. ch. 58-02, as well as elsewhere in the code. The context in which the term "congressional township" is used in chapter 58-02 is consistent with the explanation of the term provided by the Supreme Court in Weightman and as set out in federal law. A congressional township is a six mile square territory comprised of 36 sections, but it does not necessarily contain 23,040 acres (36 sections times 640 acres). See Springer Land Ass'n v. Ford, 168 U.S. 513, 531 (1897). Congressional townships were laid out following comprehensive surveys by the United States government. "The public lands shall be divided by north and south lines run according to the true meridian, and by others crossing them at right angles, so as to form townships of six miles square." 43 U.S.C. ? 751.

The term "civil township", on the other hand, has been construed to mean a legal subdivision of the county for governmental purposes. See Appeal of Trustees of Iowa College, 170 N.W. 813, 814 (Iowa 1919). The term "civil township" has been used interchangeably with the phrase "organized township" in correspondence and opinions issued by this office in the past. See e.g., Letter from Assistant Attorney General Gerald W. Vandewalle, to Stutsman County State's Attorney Charles J. Gilje, (April 4, 1972). Likewise, the term congressional township has been used to denote an unorganized township. Id. As stated by former

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Assistant Attorney General Gerald W. Vandewalle, in a July 14, 1971, letter to Rudolph S. Craft, "We would note not all townships are organized as civil townships. In some counties all or nearly all of the congressional townships are organized as civil townships. In sparsely populated areas of the State few of the congressional townships have been organized as civil townships. If a township possesses a name it is usually an organized township."

North Dakota law provides that a civil township may consist of two or more congressional townships. For example, N.D.C.C. ? 58-01-01 states, "[w]henever in this title the word 'township' is used without any other descriptive word or phrase, a civil township is referred to without regard to the number of congressional townships incorporated therein." See also N.D.C.C. ? 24-06-13 ("Where more than one congressional township is included within a civil township, the road taxes raised within the limits of each congressional township must be expended within such congressional township, unless raised to be expended outside of such civil township."); N.D.C.C. ? 58-02-01 ("If twenty-five percent of the qualified electors . . . petition the board of county commissioners for the organization of the congressional townships into a civil township, the board of county commissioners shall then submit the question whether said township shall be organized to the qualified electors in the congressional townships."); N.D.C.C. ? 58-02-11 ("The board of county commissioners may unite two or more congressional townships into one civil township or may add not more than three congressional townships to any congressional township already organized as a civil township when petitioned to do so by a majority of the qualified electors to be affected.")

As noted above, N.D.C.C. ? 58-02-19 provides that "any congressional township may be set off from the civil township of which it is a part. . ." (Emphasis supplied.) Section 58-02-20 provides that the separation of the congressional township from an organized civil township must be made only along congressional township lines. Section 58-02-22 provides, in part, that upon presentation of the petition and appropriate proof, "the board of county commissioners shall set off the congressional township . . . described in the petition as a separate civil

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township." (Emphasis supplied.)

Because the statute which authorizes division of an organized township in certain circumstances, N.D.C.C. ? 58-02-19, specifically states that a congressional township may be "set off from the civil township of which it is a part," it contemplates that a congressional township may only be set off from the civil township if the civil township contains more than one congressional township. If this statute were to be construed to allow a civil township which consists of only one congressional township, to be divided, it would render meaningless the above-quoted language from section 58-02-19. In enacting a statute, it is presumed that the Legislature intended the entire statute to be effective. N.D.C.C. ? 1-02-38(2). A congressional township which is conterminous with a civil township cannot logically be "set off from the civil township of which it is a part." Such a construction would also render meaningless the language contained in N.D.C.C. ? 58-02-22 which provides that upon presentation and proof of the petition the board of county commissioners shall "set off the congressional township . . . described in the petition as a separate civil township." A plain reading of N.D.C.C. ?? 58-02-19, 58-02-20, and 58-02-22 envisions a set off or separation of a congressional township from a civil township only if the civil township consists of more than just a single congressional township.

Based on the foregoing, it is my opinion that the provision contained in N.D.C.C. ?? 58-02-19 for setting off a non-fractional congressional township from a civil township may only be utilized when the organized civil township contains more than one congressional township.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

jjf/vkk