

LETTER OPINION
95-L-108

May 1, 1995

Mr. Lonnie Olson
Ramsey County States Attorney
524 Fourth Avenue #16
Devils Lake, ND 58301

Dear Mr. Olson:

Thank you for your letter regarding setting off a fractional township from a civil township. A fractional township "may be set off from the civil township of which it is a part" if it contains "more than eighteen sections of land and borders on a lake or river." N.D.C.C. ? 58-02-19. You ask whether N.D.C.C. ? 58-02-19 requires 18 full sections of 640 acres each, or portions of land in 18 sections.

Your letter concerns the civil township of Grand Harbor. A civil township is organized under state law as a legal subdivision of a county for governmental purposes. Letter from Attorney General Heidi Heitkamp to James T. Odegard (Jan. 20, 1994). On April 5, 1886, the Ramsey County Commissioners approved a petition for the organization of Grand Harbor Township, which consists of congressional township 154 north of range 65 west, and a fraction of congressional township 153 north of range 65 west. A congressional township is a subdivision which Congress has provided for in the survey of the public lands of the United States for the purposes of entry and sale. Letter to James T. Odegard. As a subdivision of Ramsey County, Grand Harbor Township is situated entirely within that county.

To compute the amount of land to be set off in fractional township 153 north of range 65 west, one must first determine the boundaries of that fractional township as consolidated into Grand Harbor Township. Congressional township 153 north of range 65 west is divided by the boundary line between Ramsey County and Benson County. Thus, the northern part of congressional township 153 north of range 65 west is located in Benson County, and much of the southern part is located in Ramsey County. Also, a large amount of congressional township 153 north of range 65 west is submerged under Devils Lake.

The description in the 1886 petition of the part of congressional township 153 north of range 65 west which was included in Grand Harbor Township was not limited to land above the north shore water line of Devils Lake, but included all of congressional township 153 north of range 65 west that was located in Ramsey County. Thus, the fraction of congressional township 153 north of range 65 west that is part of Grand Harbor Township includes the land submerged under Devils Lake extending south to the boundary line between Ramsey County and Benson County. See N.D.C.C. ?? 11-01-04 and 11-01-37.

Once the boundaries of a fractional township have been determined, the number of sections of land it contains can be computed. Your letter states that fractional township 153 north of range 65 west contains roughly 9,300 acres, whereas 18 full sections would contain 11,520 acres. This statement makes two assumptions that must be discussed before interpreting the meaning of "sections of land" in N.D.C.C. ? 58-02-19.

First, this estimate of the total acreage in fractional township 153 north of range 65 west assumes that it does not include the bed of Devils Lake. Both the 1886 petition and the official plat of the congressional township contradict this assumption. The official plat does not stop at the north shore line of Devils Lake, but divides both the lake bed and the Benson County fraction of the township into numbered sections according to the sequence started in the Ramsey County fraction.

As the basis for locating meander lines and water marks, the shore line of Devils Lake is significant for determining the ownership of surveyed sections. See North Shore, Inc. v. Wakefield, No. 940053 (N.D. March 16, 1995); In the Matter of the Ownership of the Bed of Devils Lake, 423 N.W.2d 141 (N.D. 1988). However, the fact that the lake bed was not sold as public land based on the government survey does not mean that submerged land is not surveyed. The official plat still describes the location of these submerged sections. Therefore, it is my opinion that all land in a fractional congressional township, including submerged land, should be counted to determine if the fractional township contains more than 18 sections of land.

Mr. Lonnie Olson
May 1, 1995
Page 3

Second, a "section of land" will not always contain 640 acres. The word "section" refers to a subdivision of a congressional township surveyed under 43 U.S.C. ? 751. A standard congressional township is a six-mile square containing 36 sections of 640 acres each. See Letter to James T. Odegard. However, a section as surveyed can be larger or smaller than 640 acres if a congressional township is not six-miles square. Id., citing Springer Land Ass'n v. Ford, 168 U.S. 513, 531 (1897); 43 U.S.C. ?? 751, 752. For reasons discussed below, it is my opinion that the phrase "sections of land" as used in N.D.C.C. ? 58-02-19 refers not to full sections, but to the equivalent of a section as surveyed. Thus, as long as a surveyed section is completely included in a fractional township, it should be counted as a section under N.D.C.C. ? 58-02-19 even if it contains less than 640 acres.

The phrase "more than eighteen sections of land" as used in N.D.C.C. ? 58-02-91 is ambiguous because, standing alone, it may mean 18 sections as surveyed or it may mean the area of 18 sections without regard to survey lines. Where statutory language is ambiguous or of doubtful meaning, it is appropriate to use extrinsic aids to interpret the meaning of a statute. Kim-Go v. J.P. Furlong Enterprises, Inc., 460 N.W.2d 694, 696 (N.D. 1990). The meaning of "more than eighteen sections of land" can be determined by interpreting N.D.C.C. ? 58-02-19 consistently with the rest of N.D.C.C. ch. 58-02. Civil townships are composed of one or more congressional townships, N.D.C.C. ? 58-02-01, and congressional townships generally must be organized in their entirety. N.D.C.C. ?? 58-02-11, 58-02-20, 58-02-22. Thus, a civil township must generally contain a minimum of one congressional township. Conversely, a congressional township may contain a maximum of one separate civil township.

Despite this general rule, a congressional township may be divided between two civil townships if it is split into fractions. N.D.C.C. ?? 58-02-08, 58-02-09. However, those fractions do not become separate civil townships, but are attached to an adjoining civil township containing at least one other congressional township. In my opinion, the combined effect of the provisions of N.D.C.C. ch. 58-02 is to prohibit a congressional township from containing two separate civil townships.

This interpretation of N.D.C.C. ch. 58-02 gives meaning to the Legislature's decision to require more than 18 sections. A congressional township will contain a maximum of 36 surveyed sections, regardless of size. Thus, the requirement in N.D.C.C. ? 58-02-19 that a fractional township contain more than half these surveyed sections before it can be set off is

Mr. Lonnie Olson
May 1, 1995
Page 4

consistent with the general rule in N.D.C.C. ch. 58-02 prohibiting a congressional township from containing two separate civil townships.

For example, assume that a standard congressional township containing 36 full sections was divided diagonally by a river or county boundary. Both fractions of the township would contain portions of land in 21 sections but only the same acreage as 18 sections of land. If N.D.C.C. ? 58-02-19 only required portions of land in more than 18 sections, both of the fractional townships in this example could be set off as separate civil townships. This would be inconsistent with the statutes prohibiting a congressional township from containing more than one separate civil township. On the other hand, because only one fractional township in a congressional township can include more land than 18 sections as surveyed, my interpretation of N.D.C.C. ? 58-02-19 assures that two fractions of the same congressional township will not both become separate civil townships.

Further, interpreting "sections of land" to require 18 full sections by acreage alone would not adequately serve the purpose of N.D.C.C. ? 58-02-19. A congressional township exceeding six-miles square may contain two fractions that both exceed the equivalent of 18 full sections of 640 acres. Therefore, it is my opinion that N.D.C.C. ? 58-02-19 requires "more than eighteen sections of land" as surveyed.

In summary, there are two steps to computing the equivalent number of "sections of land" contained in a fractional township. First, all surveyed sections completely contained in the fractional township should be counted, even if larger or smaller than 640 acres. Second, the total acreage of fractional sections not completely contained in the fractional township, such as those divided by the boundary between Ramsey County and Benson County, should be divided by the 640 acres in a standard section. Assuming other statutory requirements are met, the Ramsey County fraction of congressional township 153 north of range 65 west may be set off as a separate civil township if it contains more land, including submerged land, than is in 18 sections as surveyed.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

Mr. Lonnie Olson
May 1, 1995
Page 5

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