

**OPINION
58-10**

December 18, 1958 (OPINION)

AERONAUTICS

RE: Commission - Aircraft Registration; Fees -

Township Entitled to Remittances

This is in reply to your request for an opinion of this office as to whether or not the term "municipality" used in section 2-0511 of the 1957 Supplement to the North Dakota Revised Code of 1943 could be construed to include a political subdivision such as a township. You explain that the question has come about by the fact that a small hamlet would like a landing strip and has asked the Aeronautics Commission if assistance would be available.

Said section 2-0511 provides for registration of aircraft, and the fees therefor, then goes on to the provision to which you have reference, i.e.:

"Seventy-five percent (75%) of each registration fee so collected by the commission shall be returned by the commission to the treasurer of the county of the registrant's residence or if the registrant is not a resident of North Dakota then to the treasurer of the county in which is located the airport at which the registrant's aircraft is based and the county treasurer shall pay such remittances over to the municipality operating airport within said county; provided that if there is more than one publicly owned and operated airport within said county, that the said moneys shall be prorated between said public airports on the same ratio that the assessed value of each municipality operating an airport shall bear to the total assessed value of all municipalities operating airports within said county; and if there are no publicly owned or operated airports in said county, said remittances so paid to the county treasurer shall be held and retained by said treasurer in a separate fund to be used in the future for airport purposes."

Obviously, a township would not come under the stricter definitions of the term "municipality". For example we note provisions of section 40-0101 and section 40-4002 of the North Dakota Revised Code of 1943 as follows:

"40-0101. Definitions. In this title, unless the context or subject matter otherwise requires:

1. 'Municipal corporation' or municipality' shall include all cities, towns, and villages organized under the laws of this state, but shall not include any other political subdivisions."

"40-4002. Definitions. In this chapter, unless the context or subject matter otherwise requires:

2. The term 'municipality' shall mean any city, village, or park district in this state."

However, we also note a statutory definition of the term "municipality" sufficiently broad to include townships, in this instance, section 21-0301 of the North Dakota Revised Code of 1943 as follows:

21-0301. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. 'Municipality' shall mean a county, city, village, township, common school district, independent school district, special school district, or park district empowered to borrow money and issue written obligations to repay the same out of public funds or revenue;"

We note also decisions of the courts of other states in particular factual situations finding the term "municipality" to include a township. (See, for example: Whittingham v. Milburn Township, 100 A. 854, 90 N.J.L. 344; Hanson v. City of Cresco, 109 N.W. 1109, 132 Iowa 533, Swaney v. Georges Township Road District, 164 A. 336, 337, 309 Pa. 385. See also: Sheridan County v. Davis, 61 N.D. 744, 240 N.W. 867. We do not find statutory provisions defining the word "municipality" for the context and purposes of Title 2 of the Code or chapter 5 of said Title 2. The term "political subdivision" is defined by section 2-0401 of the 1957 Supplement to the North Dakota Revised Code of 1943 as "any county, city, village, park district, or township"; however, that definition is for the purpose of that Act (chapter), and on that basis probably would not apply to other than the Act, i.e.l, the "Airport Zoning Act".

Title 2 of the Code does specifically grant to townships, as well as cities, villages and other political subdivisions authority to have airports (section 2-0201), and apparently such political subdivisions are further given authority to use tax-raised moneys for such purposes (see section 2-0207). They are further given specifically authority to accept Federal aid and other moneys for their airports (section 2-05061). We note also that the proration provided for in said section 2-0511 is between publicly owned airports, though on the basis of assessed valuation of the municipalities concerned. We note further that in some provisions of chapter 2-05 of the 1957 Supplement to the North Dakota Revised Code of 1943, the term "political subdivision" is used as practically interchangeable with the term "municipality". (See for example: section 2-05063)

In these circumstances, it is the opinion of this office that the term "municipality" as used in said section 2-0511 of the 1957 Supplement to the North Dakota Revised Code of 1943 was intended to be so liberally construed as to include political subdivisions such as townships.

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