

## **N.D.A.G. Letter to Slorby (March 14, 1990)**

March 14, 1990

Mr. Tom P. Slorby  
Ward County State's Attorney  
Ward County Courthouse  
Minot ND 58701

Dear Mr. Slorby:

Thank you for your March 2, 1990, letter concerning the authority of a county to establish a garbage and trash collection system pursuant to N.D.C.C. § 11-11-14(13).

N.D.C.C. § 11-11-14(13) allows a county to establish a garbage and trash collection system and further provides several options in purchasing and operating the system. Among the options available to the county is the creation of special assessments against parcels of land which are benefited by the garbage and trash collection system. The last sentence of N.D.C.C. § 11-11-14(13) states that "[t]he assessment may be made, published, altered, appealed from, and confirmed under the procedures set forth in chapter 11-28.1."

N.D.C.C. ch. 11-28.1 discusses county special service districts. Among the special services are garbage removal service districts. In creating a special service district, the board of county park commissioners must prepare plans and specifications for the project, including an estimate of the cost involved. N.D.C.C. § 11-28.1-02. Following the board's resolution adopting the plans and specifications for the police protection or garbage removal district, notice of such action must be published and a hearing must be held to hear objections made by any interested party, his agent, or attorney. N.D.C.C. § 11-28.1-03. If at that hearing written protests signed by owners of more than half of the area of the property included within the service district are filed, the protests are considered to be a bar against further proceedings with the project as described in the original specifications. N.D.C.C. § 11-28.1-04. Assuming the specifications are continued by the board of county park commissioners and that insufficient protests are filed, assessment of expenses are made and the project continues. N.D.C.C. § 11-28.1-05, et. seq.

In your letter, you state your opinion that the last sentence of N.D.C.C. § 11-11-14(13) cannot be read to conclude that protests filed by more than one-half of the landowners of the affected service district act as a bar to the project. However, the last sentence of N.D.C.C. § 11-11-14(13) incorporates the procedure provided for by N.D.C.C. ch. 11-28.1 concerning the manner in which the assessment is to be made, published, altered, appealed from, and confirmed. As described above, the assessment procedure set forth in N.D.C.C. ch. 11-28.1 involves several events including the approval of plans and specifications, notice to the public of those plans and specifications, the opportunity of the

public to be heard, the effect of written protests, and the manner in which the project may be implemented, including the confirmation of assessments. All of the assessment procedures provided for in N.D.C.C. ch. 11-28.1 are interrelated and cannot be taken out of context.

Thus, I must respectfully disagree with your opinion and conclude that all of the procedures set forth in N.D.C.C. ch. 11-28.1 concerning the special assessments for special service districts are applicable to those special assessments used to pay for the garbage and trash collections system established by a county pursuant to N.D.C.C. § 11-11-14(13), including that provision which states that sufficient protests may bar continuation of the project.

My conclusion is further supported by a review of the legislative history. N.D.C.C. § 11-11-14(13) was adopted by the legislature in 1971. 1971 N.D. Sess. Laws ch. 123. Senate Bill No. 2398 amended N.D.C.C. § 11-11-14 to authorize the county to establish garbage collection systems. In appearing before the Senate Committee on Political Subdivisions, State Health Department official Willis Van Heuvelen stated "[t]his bill permits the county to set up the facilities like the city for disposing of garbage." Hearing on S. 1298 Before the Senate Comm. on Political Subdivisions, 42d ND Leg. (February 5, 1971) (statement of Willis Van Heuvelen).

The authority of a city to dispose of sewage and garbage is provided for by N.D.C.C. ch. 40-34. In paying the cost of sewage or garbage disposal, a city is given five alternative methods. N.D.C.C. § 40-34-02. One of the methods involves the creation of a special improvement district similar to those authorized by N.D.C.C. ch. 40-22. N.D.C.C. § 40-34-02(5). Where such a special improvement district is created, the governing body must consider written protests filed against the improvement. "After the hearing has been held, the governing body, if it finds the protests to contain the signatures of the owners of a majority of the property liable to be charged, shall not proceed further with the improvement." *Id.*

The procedure allowing a city to pay for sewage and garbage disposal systems using special assessment districts requires consideration of written protests filed against the improvement and prohibits continuation of the project where a majority of the property owners protest that project. Senate Bill No. 2398 was intended to mimic statutory authority enjoyed by cities concerning garbage disposal systems. Thus, the conclusion must be that legislature intended county garbage collections system paid for by special assessments to be treated in a similar manner.

Finally, you ask whether the cost of the garbage collection service created pursuant to N.D.C.C. § 11-11-14(13) may be paid by annual assessment and, if so, can those assessments be changed from time to time due to a change of circumstances. I assume by this question you are inquiring whether these special assessments may expire following a one-year period only to be followed by new assessments. I can find no reason why the county park commissioners could not utilize the authority of N.D.C.C. § 11-11-14(13) and create special service districts pursuant to the provisions of N.D.C.C.

ch. 11-28.1 on a yearly basis. However, each year the board would have to start anew in creating the special assessment district and would have to follow every procedure outlined in N.D.C.C. ch. 11-28.1. Following the confirmation of the assessment list by the special assessment commission and the filing of that list with the office of county auditor, there is no provision within N.D.C.C. ch. 11-28.1 for any change of the assessment amounts so long as the assessments continue in effect. Thus, the assessments could not be changed within that year's time due to a change of circumstances.

I hope this information and discussion is helpful for you.

Sincerely,

Nicholas J. Spaeth

jfl