

**LETTER OPINION
2009-L-03**

February 6, 2009

Mr. Wade G. Enget
Tioga City Attorney
PO Box 369
Stanley, ND 58784-0369

Dear Mr. Enget:

This is in response to your request for an opinion on whether the Tioga City Commission has the authority to remove a person it appointed to serve on the Tioga Airport Authority.

ANALYSIS

A city commission appoints persons to serve on an airport authority pursuant to N.D.C.C. § 2-06-02(1). This state law provides:

[T]he governing body of the municipality . . . shall appoint five persons as commissioners of the authority. . . . [E]ach commissioner must be appointed for a term of five years, except that vacancies occurring otherwise than by expiration of term must be filled for the unexpired term by the governing body.

This statute does not give the city governing body control of the term,¹ or allow the removal of the appointee at any time.²

As determined in a previous Attorney General Opinion, when a term is specified by statute, and the statute is silent regarding removal of the appointee, then the appointee

¹ Compare State ex rel. Kositzky v. Prater, 189 N.W. 334 (N.D. 1922) (appointing board may remove appointee during appointee's term when state law says the "term of office shall at all times be subject to . . . [the appointing board's] immediate control.")

² Compare State ex rel. Weeks v. Olson, 259 N.W. 83 (N.D. 1935) (appointing Governor may remove appointee during appointee's term when state law says, "[t]he Governor may remove the . . . [appointee] at any time")

may not be removed.³ I note that as introduced, H.B. 1369, now pending before the State Legislature, attempts to address this issue by expanding the powers of a governing body to remove an officer of a political subdivision.

CONCLUSION

It is my opinion that the Tioga City Commission does not have the authority to remove a person it appointed to serve on the Tioga Airport Authority. It is still possible for a vacancy to occur under N.D.C.C. § 44-02-01, however. This state law provides that an office becomes vacant in certain circumstances, including when the officerholder resigns, ceases to be a resident, or is convicted of a felony.

Sincerely,

Wayne Stenehjem
Attorney General

las/vkk

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.⁴

³ See N.D.A.G. 2007-L-16.

⁴ See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).