

OPINION
79-1

March 9, 1979 (OPINION)

Mr. Zane Anderson
Bowman County State's Attorney
P. O. Box 936
Bowman, North Dakota 58623

Re: Bowman County Airport Authority, Bowman, North Dakota

Dear Mr. Anderson:

This is in reply to your letter of January 26, 1979, requesting my opinion on questions relating to the proposed annexation of the property of the Bowman County Airport Authority by the City of Bowman.

You advise that the Bowman County Airport Authority was created January 2, 1973, by the County Commissioners of Bowman County under the provisions of Chapter 2-06, N.D.C.C.; that the Bowman Municipal Airport which is owned, operated and governed by the Bowman County Airport Authority is located on property adjacent to the city limits of the City of Bowman; and that the Bowman County Airport Authority levies four mills on the net taxable valuation of property in Bowman County for the support of the airport pursuant to the provisions of Section 2-06-15, N.D.C.C.; and that the City of Bowman proposes to annex the property owned by the Bowman County Airport Authority.

You then ask the following questions:

1. If the property is annexed by the City of Bowman, will the Bowman County Airport Authority lose its county tax levy which levy is authorized pursuant to Section 2-06-15, N.D.C.C.?
2. If the property is annexed will the City Commission of the City of Bowman become the "governing body" which has the power to appoint the airport authority commissioners thereby changing the airport authority from the Bowman County Airport Authority to the Bowman Municipal Airport Authority?
3. If the property is annexed, will the property be subject to any city tax levies including property tax levies and special assessments for improvements adjacent to airport property?

As to your first question, if the property is annexed by the City of Bowman, it is our opinion that the Bowman County Airport Authority will not lose its tax levy that is authorized by Section 2-06-15, N.D.C.C. We have found nothing in that section or elsewhere in Chapter 2-06, N.D.C.C., that prohibits a county from levying the tax authorized by Section 2-06-15 if some or all of the property owned by the county airport authority is located within a city.

As to your second question, it is our opinion that annexation by the City of Bowman of property owned by the Bowman County Airport Authority does not by the fact of annexation alone make the Bowman City Commission the "governing body" of the Bowman County Airport Authority.

The Bowman City Commission is authorized to take over the Bowman County Airport Authority's property or govern its operations only if the Bowman County Airport Authority consents to it or if the Bowman County Airport Authority and the Bowman City Commission enter into a joint operations agreement. This is because subsection 5 of Section 2-06-07 provides in part that:

. . .an authority shall not acquire or take over any airport or air navigation facility owned or controlled by another authority, a municipality, or public agency of this or any other state without the consent of such authority, municipality, or public agency.

The term "authority" as used in the above-quoted statutory provision includes the governing body of a city because "authority" is defined in subsection 4 of Section 2-06-01 as including "the governing body of a municipality which has determined to exercise the powers of a municipal airport authority, pursuant to section 2-06-02." Section 2-06-16 relating to joint operations also incorporates the same definition of "authority." Therefore the Bowman City Commission could not take over the Bowman County Airport Authority's property or govern its operations unless the Bowman County Airport Authority gave its consent as provided in subsection 5 of Section 2-06-07 or entered into a joint operations agreement for that purpose with the Bowman City Commission pursuant to Section 2-06-16.

As to your third question, if the property of the Bowman County Airport Authority is annexed by the City of Bowman, it will not be subject to any city tax levies. This is because the Authority is a "public body corporate and politic" as provided in Section 2-06-02 whose property is declared by Section 2-06-17 "to be acquired and used for public and governmental purposes" and, as provided in Section 2-06-18, "shall be exempt from taxation to the same extent as other property used for public purpose." Since property owned by a municipal corporation or used exclusively for public purposes is exempted from taxation by Section 176 of the North Dakota Constitution, the property of an airport authority created pursuant to N.D.C.C. Chapter 2-06 is exempt from taxation.

An additional part of your third question is whether the property of the Bowman County Airport Authority would be subject to special assessments by the City of Bowman for improvements adjacent to the airport property in the city if the airport property is annexed.

While this question apparently has never been directly considered by our State Supreme Court and the answer to it therefore is not free from doubt, it is our conclusion that if the property of the Bowman County Airport Authority were annexed by the City of Bowman, the City could subject the property of the County Airport Authority to special assessments for improvements that would benefit that property, as explained in the following paragraphs.

N.D.C.C. Section 40-23-07, which provides regulations governing determination of special assessments, and N.D.C.C. Section 40-23.1-06, which provides an alternative method for determining special assessments, each include the following provision:

Benefited property belonging to counties, cities, school districts, park districts, and townships, shall not be exempt from such assessment, and such public corporations whose property is so assessed shall provide for the payment of such assessments, installments thereof and interest thereon, by the levy of taxes according to law.

The above provision was added to Section 40-23-07 by Chapter 285, S.L. 1947, probably because of what is apparently the general rule that public property is not subject to special assessments unless the Legislature has so provided by statute, either expressly or by necessary implication. See 63 C.J.S., Municipal Corporations, Section 1332; 70 Am. Jur.2d., Special or Local Assessments, Sections 52, 56, and 57; and 48 Am. Jur., Special or Local Assessments, Sections 84, 88, and 89.

While the provision quoted above from Section 40-23-07 does not expressly provide that benefited property belonging to a county airport authority shall not be exempt from special assessments, it does provide that benefited property belonging to a county shall not be exempt. In view of the fact that a board of county commissioners as the governing body of a county is authorized by Section 2-06-02 to either directly exercise the functions of an airport authority or, instead, create a municipal (county) airport authority to exercise those functions, it does not seem that the Legislature could have intended the property of a county airport authority to be subject to special assessments pursuant to Section 40-23-07 or Section 40-23.1-06 if the airport authority's functions were exercised directly by the board of county commissioners as authorized by Section 2-06-02 but exempt if exercised by commissioners of a county airport authority created by the board of county commissioners pursuant to Section 2-06-02.

The provisions of the Airport Authorities Act in N.D.C.C. Chapter 2-06 parallel in many respects the provisions of the Urban Renewal Law in N.D.C.C. Chapter 40-58. In *City of Southwest Fargo Urban Renewal Agency v. Lenthe*, 149 N.W.2d. 373 (1967), our State Supreme Court in construing the Urban Renewal Law said, page 378:

(3) It will be noted from a study of the statute that urban renewal property is "exempt from all taxes of the municipality, the county, the state or any political subdivision thereof." Had the legislature intended that the urban renewal property be exempt from special assessments, the usual language to accomplish that would have been "all taxes and special assessments." The failure to make reference to special assessments, we believe, was intentional.

The statute referred to in the above quotation was subsection 2 of Section 40-58-12 of the Urban Renewal Law. It is similar to Section 2-06-18 of the Airport Authorities Act in that Section 2-06-18 also

exempts property of an airport authority from taxation but is silent as to special assessments; it would seem, therefore, that the courts would construe Section 2-06-18 in the same way. In that case the Court said further in reference to the above holding:

Section 40-23-07 further supports our view. The pertinent part of that section reads as follows:

40-23-07. Regulations governing determination of special assessments by commission - Political subdivisions not exempt. - * * *Benefited property belonging to counties, cities, villages, school districts, park districts and townships, shall not be exempt from such assessment, and such public corporations whose property is so assessed shall provide for the payment of such assessments, installments thereof and interest thereon, by the levy of taxes according to law. * * *North Dakota Century Code.

Although urban renewal agencies are not specifically mentioned therein, cities are, and their property is made specifically not exempt from special assessments. (149 N.W.2d. at 378)

Section 40-58-15 of the Urban Renewal Law provides that any municipality "may itself exercise its urban renewal project powers" or it "may elect to have such powers exercised by the urban renewal agency created by section 40-58-16." These provisions are very similar to those in Section 2-06-02 of the Airport Authorities Act which provides that:

Any municipality may, by resolution of its governing body, create a public body corporate and politic to be known as a municipal airport authority, which shall be authorized to exercise its functions upon the appointment and qualification of the first commissioners thereof; or the governing body may by resolution determine to exercise any or all power granted to such authorities in this chapter until or unless such powers are or have been conferred upon a municipal or regional airport authority.

Based on the similarity of the provisions of Airport Authorities Act, N.D.C.C. Chapter 2-06, to those in the Urban Renewal Law, N.D.C.C. Chapter 40-58, and based on the interpretation of the Urban Renewal Law and Section 40-23-07 in City of Southwest Fargo Urban Renewal Agency v. Lenthe, quoted above, we believe that property of a county airport authority annexed by a city can be made subject to the city's special assessments for improvements that benefit that property because Sections 40-23-07 and 40-23.1-06 provide that benefited property of a county shall not be exempt from special assessments.

Enclosed for your information is a copy of our letter of December 28, 1978, to counsel for the Bowman County Airport Authority on this subject.

It is hoped that the foregoing will be of assistance.

ALLEN I. OLSON

Attorney General