

July 21, 2021

Rebecca Flanders  
Pembina County State's Attorney  
301 Dakota St. W., # 9  
Cavalier, ND 58220

Dear Ms. Flanders:

I received your request for an opinion asking whether N.D.A.G. 2002-L-31 and N.D.A.G. 2002-L-70 continue to be the opinion of this office; and what are the potential consequences for failure of a political subdivision to follow the reasonable legal advice of the officials who are charged with the responsibility of giving legal advice. This office does not typically issue opinions to merely reconfirm opinions previously issued. We will revisit opinions if subsequent court cases are issued or if relevant statutes have been enacted or amended.

Your letter inquires about the possible effect of the *Boehm*<sup>1</sup> and *Fredrickson*<sup>2</sup> cases on the current applicability of N.D.A.G. 2002-L-31 and N.D.A.G. 2002-L-70. Those court opinions were issued in 1964 and 1965, respectively, long before the opinions from this office, which were issued in 2002. It is reasonable to assume the Attorney General's opinions considered these court cases at the time they were issued. Consequently, the two referenced court opinions would not affect the validity of the Attorney General's opinions decades later. Further, I note that 2021 S.B. 2041 was introduced in an apparent attempt to create a tax exemption for potato warehouses in certain circumstances. The bill would have rendered the previous opinions from this office inaccurate. However, the Legislature defeated that portion of the proposed bill, rejecting the assertion that this exemption should be added to the statute. Therefore, it is clear that the Legislature specifically declined to include potato warehouses in the exemption, as the county commission attempts to do here.<sup>3</sup> Attorney General's opinions remain the opinion of this office until the question is addressed directly by

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<sup>1</sup> *Boehm v. Burleigh Cnty.*, 130 N.W.2d 170 (N.D.1964).

<sup>2</sup> *Fredrickson v. Burleigh Cnty.*, 139 N.W.2d 250 (N.D.1965).

<sup>3</sup> There was also a proposal for an interim study of the topic, but the Legislature opted not to move forward with the proposed study.

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the courts<sup>4</sup> or the law changes such that the opinion is no longer valid. In this case, neither of those circumstances have occurred, and therefore the 2002 opinions remain the legal opinion of this office.

Your analysis of the questions regarding raising crops is reasonable and based in law and fact. There have been no intervening court cases or legislation that would lead to a new opinion that would be contrary to the previously issued opinions.

Finally, while there are no specific penalties in state law that apply to county commissioners failing to adhere to the law and their attorney's legal advice, a court could determine that the commission members are derelict in their duties under the law for ignoring both the opinions of the Attorney General and any advice from their state's attorney.<sup>5</sup>

Sincerely,

Wayne Stenehjem  
Attorney General

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.<sup>6</sup>

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<sup>4</sup> It appears this question was previously addressed by the District Court in *Estad Farm Corp. v. Pembina Cnty. Bd. of Cnty. Comm'rs*, Pembina Cnty. Civil No. 34-2020-CV-00079.

<sup>5</sup> N.D.A.G. 2009-L-15; N.D.A.G. 98-L-146.

<sup>6</sup> See *State ex rel. Johnson v. Baker*, 21 N.W.2d 355 (N.D. 1946).