

**LETTER OPINION
2010-L-04**

March 8, 2010

Mr. Peter H. Furuseth
Williston City Attorney
PO Box 417
Williston, ND 58802-0417

Dear Mr. Furuseth:

Thank you for your letter asking whether N.D.C.C. § 38-09-19 applies to municipalities. For the reasons stated below, it is my opinion that N.D.C.C. § 38-09-19(1), concerning the lease of minerals through private negotiation, applies to municipalities.

ANALYSIS

The statute, N.D.C.C. § 38-09-19, sets forth an exception to the requirement that oil and gas leases for “public land” are to be issued at public auction. More specifically, it states that “nonoperative” oil and gas leases for public land “may be executed through private negotiation.”¹

Municipalities fall within the statute. The statute refers to “acreage or mineral rights owned by the state or its departments and agencies or political subdivisions.” There are several reasons that the term “political subdivisions” includes municipalities.

First, “[p]olitical subdivision” means a city, county, township, or solid waste management authority.”² While this definition is in a different chapter of the code than the term in question, where a term is defined in the Century Code “that definition applies to any use of the word or phrase in other sections of the Code, except when a contrary intent plainly appears.”³ It does not plainly appear that the Legislature intended a

¹ N.D.C.C. § 38-09-19(1).

² N.D.C.C. § 23-29-03(12). See also N.D.C.C. §§ 21-06-11, 32-12.1-02(6)(a), 37-19.1-01(6), 49-17.2-01(3), and 54-40.5-02(2) (all similarly defining the term “political subdivision” to include “municipality” or “city”).

³ Adams County Record v. Greater North Dakota Ass’n, 529 N.W.2d 830, 834 (N.D. 1995).

different definition of “political subdivision” in section 38-09-19 than it gave to that term in section 23-29-03 and in other statutes in the Century Code.⁴

Second, statutory language is to be understood in its “ordinary sense,”⁵ and the ordinary meaning of “political subdivisions” includes municipalities. The state is a body of people occupying a definite area and organized under one government.⁶ A subdivision of the state is a body of people fewer in number but politically organized and occupying a part of the state’s territory.⁷ The term “political subdivision” is broad and comprehensive” and denotes any properly established division of the state that carries out some of the state’s function.⁸ A municipality meets this criterion.

Finally, the statute covers “public land.” Land owned by a public entity such as a municipality is public land.

The statute, however, does not give carte blanche authority to enter “nonoperative” oil and gas leases by private negotiation. The mineral acreage at issue must be “less than the minimum drilling unit under well spacing regulations.”⁹ This requirement must be satisfied for a municipality to use the exception provided for by the statute.

Based on the foregoing, it is my opinion that N.D.C.C. § 38-09-19(1), concerning the lease of minerals through private negotiation, applies to municipalities.

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.¹⁰

⁴ See footnote 2.

⁵ N.D.C.C. § 1-02-02.

⁶ State ex rel. Maisano v. Mitchell, 231 A.2d 539, 542 (Conn. 1967).

⁷ Id.

⁸ Id.

⁹ N.D.C.C. § 38-09-19(1).

¹⁰ See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).