

**LETTER OPINION
2019-L-06**

August 30, 2019

Mr. Erik Johnson
Fargo City Attorney
505 Broadway St N Ste 206
Fargo, ND 58102-4489

Dear Mr. Johnson:

Thank you for your letter inquiring as to whether the Fargo City Commission has the statutory authority to adopt a resolution to replace the existing five-member airport authority with the members of the City Commission. For the reasons indicated below, it is my opinion the Fargo City Commission may only exercise the powers of a municipal airport authority after payment of all debts and passage of a resolution dissolving the Fargo Municipal Airport Authority.

ANALYSIS

Section 2-06-02(1), North Dakota Century Code, provides “[a] governing body of a municipality, by resolution, may create a municipal airport authority or choose to exercise the powers provided to a municipal airport authority” pursuant to the Airport Authorities Act. If a governing body adopts a resolution creating a municipal airport authority it must subsequently appoint five commissioners to serve as the municipal airport authority.¹ Alternatively, if a governing body adopts a resolution to exercise the powers provided to a municipal airport authority, the members of the governing body constitute the commissioners of the municipal airport authority.²

The statute further details the procedure for dissolving a municipal airport authority after its creation. Specifically, N.D.C.C. § 2-06-02(4), provides:

After payment of all debts, a municipal airport authority may be dissolved by resolution of the governing body of the municipality. Before dissolution, the property of the airport authority must be transferred to the municipality or

¹ N.D.C.C. § 2-06-02(2).

² N.D.C.C. § 2-06-02(3).

sold, and the net proceeds of sale deposited in the general fund of the municipality.

In your letter you question whether a governing body can replace an already created and appointed municipal airport authority with itself by resolution.

Both the North Dakota Supreme Court and this office have stated “[t]he Legislature’s intent must be sought initially from the statutory language.”³ If the language of a statute is “clear and free of all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.”⁴ “[W]hen the plain meaning of a statute is apparent, it is unwise and unnecessary to delve further.”⁵ Further, the Court “interpret[s] statutes to give meaning and effect to every word, phrase, and sentence, and do[es] not adopt a construction which would render part of the statute mere surplusage.”⁶

As is evident by a plain reading of N.D.C.C. § 2-06-02, a governing body has two avenues to create a municipal airport authority. The governing body can either exercise the powers of the airport authority itself, or it can create a municipal airport authority and appoint “commissioners of the authority.” These avenues are mutually exclusive and cannot be exercised simultaneously. The statute does not contemplate moving from one model to another, rather, after a municipal airport authority is created by resolution of the governing body, the authority may only be dissolved by resolution after all payments of debts. Therefore, if a governing body has passed a resolution creating a municipal airport authority and appointing commissioners, it must dissolve this model before passing another resolution to exercise the rights of the authority unto itself.

This conclusion is supported by the plain language of N.D.C.C. § 2-06-02. If a governing body could effectively replace an existing municipal airport authority through a resolution pursuant to N.D.C.C. § 2-06-02(3), the procedures for dissolution of a municipal airport authority in N.D.C.C. § 2-06-02(4) would be surplusage. As a result, the statutory requirements regarding dissolution of a municipal airport authority after its creation removes any latent ambiguity.⁷

³ *Cnty. of Stutsman v. State Historical Soc’y*, 371 N.W.2d 321 (N.D. 1985).

⁴ N.D.C.C. § 1-02-05.

⁵ *Little v. Tracy*, 497 N.W.2d 700, 705 (N.D. 1993).

⁶ *Sorenson v. Felton*, 793 N.W.2d 799 (N.D. 2011) (citing *State v. Laib*, 644 N.W.2d 878 (N.D. 2002)).

⁷ It is unnecessary to ascertain the legislative intent of a statute where the language is unambiguous. However, even if the legislative history was consulted, it would not support a different conclusion. The legislative history indicates, on numerous occasions, that the purpose of the legislation was not to make substantive changes to the requirements

The Fargo City Commission created the Fargo Municipal Airport Authority by resolution on April 8, 1969.⁸ Pursuant to this resolution, the Fargo City Commission conferred its authority to exercise the powers of a municipal airport authority upon the Fargo Municipal Airport Authority. As a result, the Fargo City Commission no longer has the statutory authority to exercise the powers of a municipal airport authority. Thus, the Fargo City Commission may only exercise the powers of a municipal airport authority after payment of all debts and passage of a resolution for dissolving the existing Airport Authority pursuant to N.D.C.C. § 2-06-02(4).⁹

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

regarding the creation and dissolution of municipal airport authorities but rather update antiquated language. H.B. 1305, 2017 N.D. Leg.

⁸ Letter from Erik R. Johnson, City Att'y, Fargo, to Wayne Stenehjem, N.D. Att'y Gen. (July 1, 2019).

⁹ All property titled in the name of the Fargo Municipal Airport Authority must be transferred to the City of Fargo or sold. The net proceeds of such sales must be deposited in the City of Fargo general fund. Similarly, all contracts to which the Fargo Municipal Airport Authority is a party must be assigned to the City of Fargo or terminated. See N.D.C.C. § 2-06-02(4).

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