

LETTER OPINION
96-L-192

November 4, 1996

Mr. Ted D. Seibel
Wells County State's Attorney
PO Box 347
Fessenden, ND 58438-0347

Dear Mr. Seibel:

Thank you for your October 23, 1996, letter concerning a ballot measure dealing with continuation of the Wells County Fair. You indicated that the Wells County Commission has levied a tax for a fair pursuant to N.D.C.C. ch. 4-02 for a number of years but that the commission decided on its own motion to submit the question of continuing the levy for the fair to the electorate. The measure has been placed on the November 5, 1996, ballot and reads as follows:

COUNTY MEASURE NO. 8
WELLS COUNTY FAIR

Shall Wells County continue to hold the Wells County Fair?

A "yes" vote means Wells County will continue to hold the Wells County Fair.

A "no" vote means Wells County will discontinue holding the Wells County Fair.

Shall said measure be approved?

You also indicated that there was no petition submitted by qualified electors pursuant to N.D.C.C. § 4-02-30 to place the measure on the ballot. You question the legal effect of this measure as placed on the ballot.

As your letter indicates, this measure was not placed on the ballot in conformity with N.D.C.C. ch. 4-02. Under present law, the only method for placing before the electors of the county a binding vote on the issue of continuing the annual tax levy in aid of a county fair is by a petition addressed to the board "asking the discontinuance of the tax and containing the signatures of the qualified electors of the county in a number equal to twenty percent of the total vote cast in the county at the last preceding general election." N.D.C.C. § 4-02-30. There is no specific provision in

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N.D.C.C. ch. 4-02 which authorizes the county commission on its own to place the matter on the ballot for a binding vote.

In addition, N.D.C.C. § 4-02-30 prescribes the form of the ballot as follows:

Shall the board of county commissioners continue the annual	
levy of a tax in aid of county fair?	Yes !
	No !

However, the ballot measure you submitted is phrased differently. It speaks to continuing the fair rather than continuing the levy of a tax in aid of the fair.

Because both the manner of placing the measure before the electorate and the form of the ballot are not in compliance with N.D.C.C. ch. 4-02, it is my opinion that the results of the election on the county fair measure will have no legally binding effect. See Letter from Attorney General Nicholas J. Spaeth to Wade G. Enget (March 19, 1987) (where a county weather modification authority was established by petition and governing statute provides that the sole and exclusive method of abolishing such an authority is by petition of 51% of the qualified electors, an election held to discontinue the authority was of no legal effect).

Although the results of the ballot measure are not binding, the results may be considered as an advisory or straw vote on whether the people wish to have the board continue to levy the tax pursuant to N.D.C.C. § 4-02-26. See Enget letter. "[A] board of county commissioners may seek a nonbinding, advisory opinion of its constituents in implementing a specific statutory authority given to the board by the constitution or a statute. . . . However, the board may not seek an advisory opinion or straw vote of the electorate on matters not within its statutory or constitutional authority." Letter from Attorney General Nicholas J. Spaeth to Tom P. Slorby (December 23, 1987). The board of county commissioners has the specific authority under N.D.C.C. § 4-02-26 to continue the county fair levy after the first year's grant of aid on the board's own motion. Therefore, the board has the authority to seek an advisory opinion or straw vote of the electorate on whether it should exercise its authority to continue the levy under N.D.C.C. § 4-02-26.

Consequently, it is my opinion that even though the results of the election are not binding and are of no legal effect, the county commission may consider the results of the election as an advisory or

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straw vote in determining whether to continue the levy upon the board's own motion as authorized by N.D.C.C. § 4-02-26.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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