

LETTER OPINION
98-L-120

August 25, 1998

Mr. Bruce A. Selinger
Slope County State's Attorney
PO Box 1173
Dickinson, ND 58602-1173

Dear Mr. Selinger:

Thank you for your letter asking how the Slope County Weather Modification Authority (Authority) may be abolished.

The Authority was originally created in 1970 under former N.D.C.C. § 2-07-06 by petition of 51% of the electors and by a resolution of the Slope County Commission (Commission). (N.D.C.C. ch. 2-07 was repealed by S.L. 1981, ch. 631, § 42.) This Authority operated for five years, its statutory limit. (N.D.C.C. § 61-04.1-23 now provides for an initial term of ten years.) A subsequent Authority was re-created by resolution for five years beginning July 1, 1975. This was authorized by N.D.C.C. § 2-07-06.4, later re-codified as N.D.C.C. § 61-04.1-27.

Unless a weather modification authority, created pursuant to N.D.C.C. § 2-07-06, was re-created pursuant to N.D.C.C. § 2-07-06.4 before the expiration of its five-year term, it automatically expires. In addition, before the five-year term expires, a weather modification authority created pursuant to N.D.C.C. § 2-07-06 could be abolished pursuant to N.D.C.C. § 2-07-06.5 by resolution of the county commission after receipt of a petition of 51% of the electors. (N.D.C.C. § 2-07-06.5 was later re-codified as N.D.C.C. § 61-04.1-28.)

The Authority at issue here was re-created in 1975 pursuant to N.D.C.C. § 2-07-06.4. N.D.C.C. § 2-07-06.4 (1973 Supp.) provided that "[w]hen a weather modification authority is about to expire, the board of county commissioners of any such county may by resolution authorize the creation of such weather modification authority . . . for additional five-year periods" This statute further provides that such a resolution must be adopted by the county commission prior to the expiration of the existing weather modification authority. Id. Prior to the expiration of the Authority created pursuant to N.D.C.C. § 2-07-06, the Commission, by resolution authorized by N.D.C.C. § 2-07-06.4, re-created the Authority for a five-year period commencing July 1, 1975, and extending until June 30, 1980.

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A weather modification authority re-created solely by resolution after the initial five-year term and pursuant to N.D.C.C. § 2-07-06.4 (now N.D.C.C. § 61-04.1-27) may be abolished only pursuant to N.D.C.C. § 61-04.1-30. This statute authorizes a weather modification authority to be abolished by petition and election. The petition must be signed by at least 20% of the county's qualified electors and must request an election on abolishing a weather modification authority created by N.D.C.C. § 61-04.1-27. If the petition is presented to the county commission at least 45 days prior to the next countywide election, the county commission must submit the question to the voters at that election. N.D.C.C. § 61-04.1-30. Upon approval by a majority of the voters, the county commission shall abolish the weather modification authority as of December 31st following the election. Id. Consequently, it is my opinion that a weather modification authority, initially created by petition signed by 51% of the electors, but subsequently re-created by resolution under N.D.C.C. § 61-04.1-27 (or former N.D.C.C. § 2-07-06.4), may only be abolished by election after receipt of a petition signed by 20% of the electors, in accordance with N.D.C.C. § 61-04.1-30.

I have reviewed the March 19, 1987, opinion issued to Mr. Wade Enget to which you refer, and Mr. Enget's letter requesting the opinion. He stated that the Mountrail County Commission renewed its weather modification authority after its initial five-year term, presumably pursuant to N.D.C.C. § 2-07-06.4. The opinion, however, makes no reference to this fact. To the extent that the 1987 opinion may be inconsistent with the results of this opinion, it is superseded. However, I note that Mr. Enget's request letter also indicates that the question to abolish the Mountrail County Weather Modification Authority was placed on the ballot by the Mountrail County Commission, and not by petition signed by at least 20% of the county electors as required in N.D.C.C. § 61-04.1-30. Therefore, although the conclusions in the 1987 opinion are overruled, the result in that opinion was nevertheless correct.

In summary, it is my opinion that a weather modification authority, when re-created by resolution under N.D.C.C. § 61-04.1-27, may be abolished, before its natural expiration, only by an election under N.D.C.C. § 61-04.1-30.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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