

**LETTER OPINION**  
**99-L-19**

February 9, 1999

Mr. Jeff Rotering  
Slope County State's Attorney  
PO Box 1379  
Hettinger, ND 58639-1379

Dear Mr. Rotering:

On December 14, 1998, your predecessor as Slope County State's Attorney, Bruce Selinger, requested an Attorney General's opinion relating to the Slope County Weather Modification Authority. The opinion is being issued to you as Mr. Selinger's replacement as Slope County State's Attorney.

The Slope County Weather Modification Authority was originally created by petition pursuant to N.D.C.C. § 2-07-06, later re-codified as N.D.C.C. § 61-04.1-23. The Authority was re-created or renewed by resolution pursuant to N.D.C.C. § 2-07-06.4, later re-codified as N.D.C.C. § 61-04.1-27. In a June 1998 election, the Slope County electors determined that the Authority should be abolished. See N.D.C.C. § 61-04.1-30. Such abolishment was to become effective on December 31, 1998. Id.

In November of 1998, a petition was filed to create a new weather modification authority. See N.D.C.C. § 61-04.1-23. It was also expected that a petition would soon be filed to abolish the weather modification authority created by the petition filed in November. The following two questions were asked:

1. Do the unexpended funds that remain in the name of the Authority as of December 31, 1998, have to be returned to the general fund?
2. The last paragraph in N.D.C.C. § 61-04.1-23 discusses what should occur when more than one petition is filed with the board of county commissioners on or about the same time. Does this last paragraph apply to a situation where one of the filed petitions relates to the creation of a weather modification authority and the other filed petition relates to the abolishment of a weather modification authority?

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I will respond to your questions in the order presented. N.D.C.C. § 61-04.1-30 provides that a weather modification authority shall be abolished as of December 31st following the election which determined that the authority should be abolished. That section also states, "[a]ll unexpended funds remaining in the name of the weather modification authority, after all proper bills and expenses have been paid, shall be deposited in the general fund of the county." N.D.C.C. § 61-04.1-30. It appears that this language would govern the deposit of the unexpended funds in this case. However, two other provisions must be reviewed.

If a weather modification authority created pursuant to N.D.C.C. § 61-04.1-23 is re-created by a resolution of the board of county commissioners pursuant to N.D.C.C. § 61-04.1-27 before the expiration of its term, all unexpended funds may remain with the re-created weather modification authority. See N.D.C.C. § 61-04.1-23. However, since the authority was created by petition and not by resolution, the language in N.D.C.C. § 61-04.1-23 is not relevant in this case.

N.D.C.C. § 61-04.1-23 also states:

Nothing in this section shall prevent continuation or reinstatement of a weather modification authority, provided the authority is renewed for another ten years by petition of the qualified electors in the same manner as the initial weather modification authority was created by petition of qualified electors as provided for in this chapter.

This language authorizes a weather modification authority created pursuant to N.D.C.C. § 61-04.1-23 to be renewed by petition of the qualified electors. The petition filed in November of 1998, however, did not purport to renew the Slope County weather modification authority which was to expire on December 31, 1998. Rather, the petition filed in November requested the creation of a weather modification authority, three of whose five members would be different from the existing Slope County weather modification authority. Thus, the language quoted above in N.D.C.C. § 61-04.1-23 also does not apply to the situation in Slope County.

The only language that is relevant to where the unexpended funds should be deposited is the language in N.D.C.C. § 61-04.1-30 referred to earlier in this letter. Thus, it is my opinion that the unexpended funds of the Slope County Weather Modification Authority, abolished in the June 1998 election, must be deposited in the general fund of the county.

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The remainder of this letter responds to the second question. N.D.C.C. § 61-04.1-23 relates to the creation of a weather modification authority by petition of the electors. The petition must include the names of five qualified electors who are to be appointed as commissioners for the weather modification authority and the number of mills to be levied by the county for weather modification purposes. See N.D.C.C. § 61-04.1-24(2), (7). The last paragraph of N.D.C.C. § 61-04.1-23 provides:

In the event more than one petition is filed with the board of county commissioners on or about the same time, the petition with the highest percentage of the qualified electors of the county voting for the office of governor at the last preceding general election shall be selected by the board of county commissioners. However, the petition with the highest percentage must have the signatures of at least forty percent of the qualified electors in the county and the sum total of all qualified electors signing all petitions filed must equal at least sixty percent of the qualified electors in the county. In no case shall the name of the same qualified elector appear on two or more petitions, but in such event, the name shall be stricken from both petitions.

This paragraph is referring to filing, on or about the same time, of more than one petition to create a weather modification authority. It is my opinion this paragraph is not relevant to a situation where, on or about the same time, one petition is filed to create a weather modification authority and one petition is filed to abolish a weather modification authority.

Sincerely,

Heidi Heitkamp  
Attorney General

las/pg/vjk