

N.D.A.G. Letter to Wogsland (March 24, 1986)

Overruled by N.D.A.G. 99-F-07

March 24, 1986

Honorable Dan Wogsland
North Dakota State Senator
Route 1, Box W8
Hannaford, ND 58448

Dear Senator Wogsland:

Thank you for your letter of March 1, 1986, which we received on March 13, 1986, inquiring as to the effect of a 1965 Attorney General's opinion indicating that a township resolution of relinquishment of zoning authority is irrevocable.

Enclosed please find a copy of my February 12, 1986, letter to Representative Gerntholz on this very issue. As you will note, the 1965 opinion, as well as a letter issued on March 11, 1966, has concluded that there are no statutory procedures by which a township may withdraw its relinquishment of zoning authority. As I further stated in my letter to Representative Gerntholz, the fact that the Legislature has not responded to this opinion and letter through amendments to N.D.C.C. § 11-33-20 would appear to suggest that such is indeed the intent of the Legislature.

There is some discussion in the 1966 letter as to a possible court method to accomplish such a reacquirement of zoning authority by an action in a North Dakota court. I do not know whether this process would proceed, but it is possibly available.

I have enclosed a copy of the March 11, 1966, letter which I believe you do not have in your possession.

Finally, you question whether there is any authority for a board of township supervisors to alter or rescind any resolution it has enacted on any subject. I am not prepared to extend the conclusion reached with respect solely to N.D.C.C. § 11-33-20 to situations involving resolutions where a relinquishment of zoning authority is not involved. I do believe the general rule is that a governing body is authorized to change its mind when it sees fit. However, with respect to this particular statute and the relinquishment of zoning authority, the fact that the Attorney General's opinion has apparently been followed for some 21 years without any legislative response to the contrary would seem to indicate compliance with legislative intent. Should this not be the case, an appropriate legislative amendment to N.D.C.C. § 11-33-20 would be appropriate so as to accurately reflect legislative intent in this particular area.

Sincerely,

Nicholas J. Spaeth

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Enclosures