

N.D.A.G. Letter to Hickman (Aug. 6, 1986)

August 6, 1986

Ms. Linda L. Hickman
Assistant State's Attorney
Williams County
P.O. Box 1246
Williston, ND 58802-1246

Dear Ms. Hickman:

Thank you for your letter of July 2, 1986, in which you pose certain questions with regard to the recording of instruments by the Williams County Register of Deeds. You advise that the questions have arisen as a result of the wanderings of the Missouri River which forms the southern boundary of Williams County. Your question concerns whether the county register of deeds has the authority to change the tract index to reflect fluctuations of the main channel of the Missouri River where the channel serves as the boundary line of the county.

N.D.C.C. Ch. 11-18 governs the register of deeds' offices in North Dakota counties. N.D.C.C. §11-18-07 sets forth the manner and form in which tract indexes are to be kept by the register of deeds but is somewhat ambiguous. A careful reading of this statute reveals that no guidelines are established for determining what lands shall be included in tract indexes for the various counties. In addition, this office has noted in previous opinions that the register of deeds is a ministerial officer and has little or no discretion with regard to making determinations as to what documents may be filed and recorded. 1985 N.D. Op. Att'y. Gen. 142. It therefore seems that the register of deeds must change or establish the necessary tract indexes to allow the recording of instruments affecting real property filed with that office.

It is conceivable, however, that such an interpretation of N.D.C.C. §11-18-07 would require the register of deeds of Williams County to accept and record documents that affect real property located in Cass County. This would lead to an absurd result which we do not believe was intended by the Legislative Assembly. To this end, it is my opinion that there is only one reasonable interpretation which can be given to N.D.C.C. §11-18-07. That is that the register of deeds lacks the discretionary authority to refuse to change or establish tract indexes to reflect what reasonably appears to be fluctuations of the main channel of the river where the channel serves as the boundary line of the county. Nevertheless, the register of deeds is not required to change tract indexes so as to accept for filing and recording documents affecting real property when one can obviously conclude that such real estate is located outside the geographical limits of the county in which it is sought to be recorded.

Sincerely,

Nicholas J. Spaeth

lk