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LETTER OPINION
2026-L-04

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Dear Mr. Swanson, Mr. Phillips, and Ms. Wamstad:

Thank you for your September 30, 2024, letter requesting my opinion regarding the appropriate school district taxing authority for property located adjacent to the Grand Forks Air Force Base and leased to a private entity. Pursuant to N.D.C.C. § 57-15-13, a school district only has taxing authority over property located within the boundaries of the school district, and determining which school district the property is located in is a question of fact. This office, "is limited to dealing with questions of law and is not authorized to resolve factual disputes of any nature[.]".[1]

FACTS

The Grand Sky UAS Technology Park (Grand Sky) was created in 2015 and is located on a parcel of property (Property) on the Grand Forks Air Force Base but outside the base's restricted area. The United States Air Force owns the Property and leases it to Grand Forks County pursuant to a Site Development Lease. Grand Forks County subleases the Property to Grand Sky Development Company, LLC, pursuant to a Sublease for the Enhanced Use Lease Project. The Property encompasses 216.65 acres of land on the southeastern corner of the Grand Forks Air Force Base, and as noted in the Sublease for the Enhanced Use Lease Project, the Property is "under the administrative control of Grand Forks Air Force Base."[2]

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[1] N.D.A.G. 95-L-121; *see also* N.D.A.G. 2005-L-18 ("This office does not resolve questions of fact in an opinion."); N.D.A.G. 2001-L-19 ("Whether the contract serves the public interest is ultimately a question of fact which cannot be resolved in an Attorney General's opinion."); N.D.A.G. 97-L-177 ("It has been a long-standing position of this office not to issue opinions on questions of fact.").
[2] Sublease for the Grand Sky Enhanced Use Lease Project at Grand Forks Air Force Base, N.D., By & Between The Cnty. of Grand Forks & Grand Sky Dev. Co., LLC (Jan. 28, 2015).

Prior to the creation of the Grand Forks Air Force Base School District (Base District), the Property was within the boundaries of the Larimore Public School District.[3] In 1989, the North Dakota Legislature created N.D.C.C. ch. 15-27.1 relating to the establishment of school districts on military bases, at which time the Base District was created.[4] Because the federal property was not leased prior to 2015, the land was not subject to taxation on behalf of local political subdivisions. Since the execution of the lease of the Property to Grand Sky in 2015, however, Grand Forks County has collected taxes on the Property, including a school mill levy that is distributed to the Larimore Public School District. The assessment of a local tax on federal property is permissible pursuant to an exception which provides for the taxation of leased property under 10 U.S.C. § 2667(f). The Base District is considering levying taxes upon the Property to provide additional funding for educational services provided by Grand Forks Public School District to the Base District.[5] This desire to levy taxes on the Property has prompted the requesters to seek guidance from this office.

ANALYSIS

"All property in this state is subject to taxation unless expressly exempted by law."[6] All property owned exclusively by the United States is exempt from taxation "except any such property which the state and its political subdivisions are authorized by the laws of the United States to tax."[7] Federal law provides an exception allowing for the Property's lease holders to be taxed, specifically, "[t]he interest of a lessee of a property leased under this section may be taxed by State or local governments."[8] This is reiterated in Section 11 of the Site Development Lease as follows:

> 11. Taxes. Lessee shall pay to the proper authority, when due and payable, all taxes, assessments, and similar charges that may be imposed on Lessee or the Project. Each Party shall have the right, but not the obligation, at its own expense to take such actions as may be necessary and appropriate (i) to contest the validity, applicability or amount thereof; (ii) minimize such taxes, assessments or charges; or (iii) assert any exemption which may be available with respect to taxes, assessments or charges imposed on the Project. If and to the extent the Leased Premises are made taxable by

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[3] Letter from Howard D. Swanson, Att'y for Grand Forks Air Force Base Sch. Dist. No. 140, David Phillips, Att'y for Larimore Pub. Sch. Dist. No. 44, & Haley Wamstad, Grand Forks Cnty. State's Att'y, to Drew Wrigley, Att'y Gen., Off. of Att'y Gen. (Sept. 30, 2024).
[4] H.B. 1304, 1989 N.D. Leg. N.D.C.C. tit. 15 was largely re-codified in 1999, H.B. 1034, 1999 N.D. Leg., as a result the provisions of this chapter are now located in N.D.C.C. ch. 15.1-08.
[5] Letter from Howard D. Swanson, Att'y for Grand Forks Air Force Base Sch. Dist. No. 140, David Phillips, Att'y for Larimore Pub. Sch. Dist. No. 44, & Haley Wamstad, Grand Forks Cnty. State's Att'y, to Drew Wrigley, Att'y Gen., Off. of Att'y Gen. (Sept. 30, 2024).
[6] N.D.C.C. § 57-02-03.
[7] N.D.C.C. § 57-02-08(1).
[8] 10 U.S.C. § 2667(f).

> state or local governments under an Act of Congress, this Lease shall be renegotiated pursuant to 10 U.S.C. § 2667(f).[9]

It is clear from both the law and the information provided that Grand Sky's lease interest in the Property is subject to taxation by the State and local governments, including school districts.

North Dakota Century Code establishes local taxing districts,[10] including school districts,[11] and mandates that property is only subject to taxation by the taxing district in which it is located.[12] The authority to levy taxes does not extend beyond the boundaries of the taxing district. Therefore, to levy school taxes on the Property, the Property would need to be located within the boundaries of the school district.

Subsection 3 of N.D.C.C. § 15.1-08-01 states that boundaries of a military installation school district are "coterminous with all lands over which the installation has exclusive concurrent or proprietary jurisdiction."[13] Whether the Property is under the exclusive concurrent[14] or proprietary[15] jurisdiction of the Grand Forks Air Force Base is a question of fact, and this office does not resolve questions of fact in an opinion.[16] The Site Development Lease, however, provides the following:

> The Installation must maintain control over the [Property] due to its strategic location at the south end of the runway and its adjacency to the existing Alert Pad and B

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[9] Dep't of The Air Force Site Dev. Lease On Grand Forks Air Force Base, Grand Forks Cnty., N.D. (Feb. 6, 2015).
[10] "Taxing district[s]" are defined as "any political subdivision empowered to levy taxes." N.D.C.C. § 57-15-01.2(6)(f).
[11] School boards possess the authority to levy taxes on "property in the district for school purposes, as permitted in N.D.C.C. ch. 57-15." N.D.C.C. §15.1-09-33(31). *See also* N.D.C.C. §§ 57-15-13, 57-15-14.
[12] A school board may levy a tax on "the taxable valuation *of the district*." N.D.C.C. § 57-15-14(1)(e)(3) (emphasis added). *See also* N.D.C.C. § 57-15-12(1) (park districts); N.D.C.C. § 57-15-20 (townships); N.D.C.C. § 57-15-26.1 (recreation service districts); N.D.C.C. § 57-15-26.4 (hospital districts); N.D.C.C. § 57-15-26.8 (Garrison Diversion Conservancy District).
[13] N.D.C.C. § 15.1-08-01(3).
[14] "Concurrent jurisdiction" refers to the authority of both the federal government and the State to independently enforce their respective laws on federal property.
[15] "Proprietary jurisdiction" refers to those instances wherein the federal government has acquired some right or title to an area in a State but has not obtained any measure of the State's authority over the area. Captain Richard F. Papcun, *Proprietary Jurisdiction*, 13 Air Force L. Rev., 116, 117 (1971).
[16] N.D.A.G. 2005-L-18; N.D.A.G. 2001-L-19; N.D.A.G. 97-L-177; N.D.A.G. 95-L-121.

> Ramp, both of which are used by the Installation and will continue to be used and required for mission flexibility.[17]

Additionally, Section 15.3 of the Site Development Lease states, in part, "[t]he United States presently exercises *proprietary legislative jurisdiction* over the [Property]."[18] The local jurisdictions will need to make the factual findings necessary to determine whether the Property meets the requirements of N.D.C.C. § 15.1-18-01(3) such that it falls within the boundaries of the Base District. If it does, that district is the only school district that may levy taxes on the Property.

In summary, the Property leased by Grand Sky has an exception that allows for taxation to be levied upon the lessee by the State and local governments. The authority of a school district to levy taxes does not extend beyond the boundaries of the school district. The boundaries of a military installation school district are established by N.D.C.C. § 15.1-18-01(3), however, whether the Property satisfies those requirements depends on the facts, which will be determined through the local jurisdiction's fact-finding process.[19]

Sincerely,

Drew H. Wrigley
Attorney General

meo/amh

cc: Shawn Grinolds – *via email only - sgrinolds@bgwattorneys.com*

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.[20]

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[17] Dep't of The Air Force Site Dev. Lease On Grand Forks Air Force Base, Grand Forks Cnty., N.D. (Feb. 6, 2015) Recitals (iii). The Emergency Services Plan also offers further evidence of concurrent jurisdiction by outlining the emergency services that will be provided by Grand Forks County. *Id.* Exhibit H, Emergency Servs. Plan.
[18] *Id.* Section 15.3 (emphasis added).
[19] N.D.C.C. § 54-12-01(6). *See also* N.D.A.G. 2018-L-05; N.D.A.G. 99-L-02.
[20] *See State ex rel. Johnson v. Baker*, 21 N.W.2d 355 (N.D. 1946).