N.D.A.G. Letter to Slorby (March 29, 1985)

March 29, 1985

Mr. Tom P. Slorby
Ward County State's Attorney
Ward County Courthouse
Minot, North Dakota 58701

Dear Mr. Slorby:

Thank you for your letter of March 7, 1985, which was received by our office on March 12, 1985.

I agree with you that the term "electors" is not adequately defined for purposes of N.D.C.C. Ch. 18-10. I am in agreement with your derivative definition of this term. However, I would point out that H.B. 1059, which is awaiting the Governor's signature, removes the term "elector" as found in this chapter and elsewhere throughout the Century Code and replaces it with the term "qualified elector". Qualified elector is defined by this bill as a citizen of the United States who is 18 years of age or older and who is a resident of this state and of the area affected by the petition in question.

As to your questions over the definition of "freeholder", I am enclosing a copy of a letter written on March 19, 1971, to Bottineau County state's attorney indicating that freeholder meant any person who held a legal interest in land. Specifically a freeholder refers to an interest in real property as opposed to personal property.

I, too, am concerned about the constitutional implications of this definition upon the right to vote on such a petition to organization a rural fire protection district. The United States Supreme Court, in Associated Enterprises v. Toltec District, 410 U. S. 743 (1973), did uphold a state statute allowing a watershed improvement district to be created by a majority of land owners in the proposed district boundary area. The Court reasoned that the land ownership requirement in the partition process did not violate the equal protection clause where the watershed district was a governmental unit of special or limited purpose whose activities had a disproportionate effect upon land owners by way of tax assessments and liens for benefits received. See also Ball v. James, 451 U.S. 355 (1981).

However, the Rhode Island Supreme Court, in Flynn v. King, 433 A.2d 172 (RI 1981), concluded that a land ownership requirement as far as voting rights within a fire protection district was violative of the equal protection clause where no compelling state interest could be presented in support of the suspect classification based upon property ownership. The Rhode Island Supreme Court specifically noted that fire protection is a governmental function that substantially affects every resident within the fire district as opposed to just those who own property. The Rhode Island Supreme Court was not

convinced that the fact that tax assessment were made just to property owners for benefits received justified the property classification utilized in voting rights.

With respect to the rural fire protection district statutes found in N.D.C.C. Ch. 18-10, there is indeed concern over the constitutionality of those statutes limiting the right to petition for the establishment of a rural fire protection district to land owners or those who hold an interest in land. This concern results from the fact that fire protection is a governmental function that substantially effects all persons within the district as opposed to those who have an interest in land. It would appear that the discussion of the Rhode Island Supreme Court may be directly applicable to our factual situation despite the fact that our statutes do provide for tax assessments on property owners in support of the fire district. N.D.C.C. § 18-10-07.

However, I agree with you that the most prudent advice at this point is to assure all petitions contain sixty percent or more of all electors, freeholders, or other residents no matter the property ownership involved. In such a manner, the constitutional argument becomes mute.

Sincerely,

Nicholas J. Spaeth

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Enclosure