

N.D.A.G. Letter to Enget (March 19, 1987)

Overruled in part by N.D.A.G. 98-L-120

March 19, 1987

Mr. Wade G. Enget
Mountrail County State's Attorney
Mountrail County Courthouse
Stanley, ND 58784

Dear Mr. Enget:

Thank you for your letter of March 6, 1987, regarding the Weather Modification Board of Mountrail County.

According to your letter, the Weather Modification Board of Mountrail County was initially established by petition in 1970. We assume your reference to the establishment of the Board by petition refers to N.D.C.C. § 61-04.1-23 which describes the manner in which a weather modification authority is created by the petition of a stated amount of the qualified amount of electors of the county. Your letter further states that as a result of a question placed upon an election ballot, a majority of the people who voted at the election cast their vote to not renew the weather modification board. As a result of this action, the county auditor did not authorize a levy on behalf of the weather modification board.

As the Mountrail County Weather Modification Board apparently was initially established by petition pursuant to N.D.C.C. § 61-04.1-23, the sole and exclusive method of abolishing such a weather modification authority is found at N.D.C.C. § 61-04.1-28. This statute requires 51% of the qualified electors of the county to petition the board of county commissioners to recall the commissioners of a weather modification authority and to abolish that authority. On the presentation of that petition, the board of county commissioners "shall adopt a resolution recalling all commissioners of such weather modification authority and abolishing their appointed office and the weather modification authority."

There is no statutory provision for the abolishment of a weather modification authority to occur by election where the initial creation of the weather modification authority occurred by petition. Therefore, the question that appeared on the ballot as to whether the people wanted to retain the weather modification authority was nothing more than a straw vote or an advisory vote and had no legal effect. Where a weather modification authority has been initially established by petition, such a weather modification authority can only be abolished by the petition method as opposed to the election or resolution method.

Your second question inquires as to whether anything can occur due to the failure of a tax levy to be currently in place due to the belief that the weather modification authority has

been abolished. N.D.C.C. § 57-15-31.1 prohibits the certification of any taxes or the amendment of any budget beyond October 10 of each year if this certification or amendment results in a change in the amount of tax levied. There appears to be no recourse or remedy for the Weather Modification Board authority due to the failure to include a tax levy for the authority as part of the current county budget and levy of taxes.

Sincerely,

Nicholas J. Spaeth

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