

N.D.A.G. Letter to Dotzenrod (June 17, 1991)

June 17, 1991

Honorable Jim Dotzenrod
State Senator
P.O. Box 69
Wyndmere, ND 58081

Dear Senator Dotzenrod:

Thank you for your May 13, 1991, letter in which you ask three questions concerning county job development authorities. Before addressing those questions, I will set out a short summary of the background information and statutory references contained in your letter.

The board of county commissioners of Richland County has established a job development authority and has appointed the members of that authority, all pursuant to N.D.C.C. § 11-11.1-01.

Pursuant to N.D.C.C. § 11-11.1-04 and N.D.C.C. § 57-15-06.7(29), the board of county commissioners has levied a tax on the taxable valuation of property within the county; however, because the city of Wahpeton is also levying a tax for support of a job development authority or of an industrial development organization, the county tax levy may be applied only against the taxable valuation of property outside the limits of the city of Wahpeton.

The members of the board of directors of a county job development authority must be appointed by the county commissioners from the groups listed in N.D.C.C. § 11-11.1-01. No distinction is made between an appointed member who resides within a city which is levying a similar tax, precluding the county from levying its tax against property within that city, and an appointed member who does not reside within a city.

A recent decision of the Richland County job development authority has raised concerns as to whether the county job development authority should use its financial resources to encourage and assist in the development of employment within the county as a whole or only within rural Richland County.

Your first question is whether there is any general statute which prohibits persons from serving on a board established by a taxing authority if the persons do not live within the boundaries of the taxing authority. I assume that what you mean by this question is not whether the persons live within the boundaries of the taxing authority but whether they pay taxes to support the activities of the board.

There is no general statute which addresses this question and there is no provision of N.D.C.C. ch. 11-11.1 which would prohibit a resident of a city from serving on a county job development authority when the city is also levying a tax for a city job development authority and the county is therefore prohibited from levying its tax against the taxable property located within the city. However, it is not quite correct to state as you do in your letter that the members of the county job development authority who reside within the city do not live within the boundaries of the taxing authority, the county. A county job development authority encompasses the entire county, not just that portion of the county in which the tax to support its activities may be levied. Therefore, the members of the county job development authority who reside within the city are also residents of the taxing authority, the county. However, I am unable to locate any constitutional or statutory authority which would prohibit the Legislative Assembly from enacting a statute to provide that the area within the boundaries of a county job development authority does not include the area within the boundaries of a city which is levying a tax for support of a job development authority or of an industrial development organization.

A similar situation may arise with respect to a board of county park commissioners and a board of city park commissioners. A tax imposed by a board of county park commissioners may not be levied against property located in a city within the county in which park district taxes are levied unless, by resolution, the governing body of the city consents to the levy. At the same time, there is no provision which would prohibit a resident of a city which has not consented to the levy of a county parks tax from serving as an appointed member of the board of county park commissioners. The only requirement is that the appointed county park commissioner be a resident of the county.

N.D.C.C. § 11-11.1-01 also provides that if a board of county commissioners has created a county job development authority, the question of discontinuing the authority must be placed on the ballot at the next regular election if electors of the county equal in number to ten percent of the votes cast in the county for the office of Governor in the last general election request a vote on that question by a petition. Your second question, which relates to this provision, has two parts. The first part of your question is whether there are any requirements that such petition signers reside within the area of the county subject to the tax levy. The second part of your question is whether there is any requirement that residents of the county must live within the area within the county subject to the tax to be eligible to vote on the question of discontinuing the county job development authority.

The answer to both parts of this question is no, there are no such requirements. The only requirements are that the persons signing the petition and the persons voting on the question be electors of the county.

As an example of a similar situation, again with respect to a board of county park commissioners, no levy in excess of one mill may be made by the board of county park commissioners without the approval of the eligible voters in the county. An "eligible voter" is determined without regard to whether they live in a city which is not subject to the county parks tax levy.

Your final question is whether a board of county commissioners may levy a tax for a job development authority and spend the funds received from that levy before the resolution creating the county job development authority has been approved.

N.D.C.C. § 11-11.1-04 provides that a job development authority tax may not be levied by a board of county commissioners unless the county has a job development authority. This section also gives the power to spend the funds raised by the job development authority tax levy to only the job development authority. Therefore, it is my opinion that a board of county commissioners may not levy a job development authority tax before creating, by resolution, a county job development authority. Further, the board of county commissioners has no authority to spend the funds raised by such a tax levy even if the tax levy has been imposed prior to the creation of the county job development authority.

I hope that this discussion is helpful to you. If you have any additional questions or would like to discuss any of this material in more detail, please get in touch with me.

Sincerely,

Nicholas J. Spaeth

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