

N.D.A.G. Letter to Sillers (July 8, 1991)

July 8, 1991

Cameron D. Sillers
Cavalier County State's Attorney
908 Third Street
Langdon, ND 58249

Dear Mr. Sillers:

Thank you for your June 20, 1991 letter concerning fire protection districts.

You ask whether N.D.C.C. §§ 18-10-11 and 18-10-12.1 must be read together and whether the county commission may refuse a request to withdraw from a fire protection district if all of the requirements of section 18-10-12.1 are met. You also ask if an owner withdraws from one fire protection district whether that person's land must be annexed to a second fire protection district pursuant to section 18-10-11 if the owner objects to annexation.

N.D.C.C. ch. 18-10 governs rural fire protection districts. N.D.C.C. § 18-10-11 establishes the procedure for annexation of territory adjacent to an existing fire protection district. Prior to 1985, there was no established procedure for withdrawal from a fire protection district. The 1985 Legislative Assembly enacted House Bill No. 1435, which established a procedure for withdrawing from a fire protection district. That bill provided that territory withdrawn from a district continued to be subject to assessment for its proportion of obligations outstanding at the time of withdrawal. 1985 N.D. Sess. Laws ch. 255, § 1. This bill is codified at N.D.C.C. § 18-10-12.1.

In response to your first question, the county commission may not refuse a request to withdraw if the requirements of N.D.C.C. § 18-10-12.1 are met. Thus an owner of territory within a fire protection district wishing to withdraw the property from the district "may do so as provided in this section." Withdrawal is therefore subject only to the enumerated restrictions. The restrictions include a requirement that the territory to be withdrawn border the outer boundary of the district, the territory remains subject to obligations of the district outstanding at the time a petition for withdrawal is filed with the county auditor, mill levies previously imposed remain in effect until the outstanding obligations are paid, and the petition is signed by owners of sixty percent of the territory to be withdrawn. Once filed, the petition is verified by the county auditor, who certifies the percentage proportions of taxable valuation of the territory to be withdrawn to the taxable valuation of all property in the district. This figure is then given to the board of directors of the district. The directors must attach a statement of outstanding obligations to the auditor's certificate and petition and forward the documents to the county commission. The board of county commissioners:

. . . shall, at a regular meeting, compute the indebtedness proportionately assignable to the territory sought to be withdrawn, and shall by written order describe the boundaries of the territory withdrawn, the indebtedness of the district assigned to the territory and subject to continued levy under section 18-10-07. The order and computation must be filed in the office of the county auditor or auditors.

N.D.C.C. § 18-10-12.1(8). The word "shall" is used in subsection 8 to indicate that the action of the board or boards is mandatory. The legislative history relating to N.D.C.C. § 18-10-12.1 supports this conclusion.

In written comments submitted to a legislative committee, concerning the version of House Bill No. 1435 which was enacted, Representative Conmy said:

If 60 percent of owners (of surface) petition [sic] - the right of withdrawal is absolute, and the board of the district cannot block it.

Hearing on H.B. 1435 Before House Comm. on Political Subdivisions, 49th ND Leg. (Feb. 8, 1985) (Statement of Representative Patrick A. Conmy) (emphasis in original). Therefore, upon receipt of a verified and certified petition, the county commission must issue a written order describing the boundaries of the territory withdrawn and the indebtedness of the district assigned to the territory and subject to continued levy.

Concerning your second question, there is no requirement that property withdrawn from one district be annexed to another district. N.D.C.C. § 18-10-01 provides for organization of fire protection districts upon petition of sixty percent of the property owners in the territory to be organized in a district. N.D.C.C. § 18-10-11 provides for annexation of adjacent land upon petition signed by sixty percent or more of the qualified electors who have an ownership interest and are residing in the territory to be annexed. Neither section permits forced annexation by a fire protection district board of directors or a county commission or establishes a requirement that all territory be a part of a district. Therefore, property withdrawn from one district may be annexed to another district only if it is part of the territory included in a petition filed under N.D.C.C. §§ 18-10-01 or 18-10-11.

I hope this information is helpful to you.

Sincerely,

Nicholas J. Spaeth

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