

N.D.A.G. Letter to Fisher (Aug. 8, 1991)

August 8, 1991

Mr. B. Barton Fisher, Chairman
Atmospheric Resource Board
900 East Boulevard Avenue
Bismarck ND 58505-0850

Dear Mr. Fisher:

Thank you for your July 9, 1991, letter regarding my interpretation of N.D.D.C. § 61-04.4-06. Specifically, you inquired about the relationship between the Atmospheric Resource Board and the State Water Commission pursuant to this statute.

For the reasons stated below I conclude that the legal relationship between the Board and the Commission is delineated by statute.

N.D.C.C. § 61-04.1-06 states:

Direction and supervision by state water commission -- Independent functions retained by board. The powers, functions, and duties of the board shall be administered under the direction and supervision of the North Dakota state water commission. The board shall retain the quasi-judicial, quasi-legislative, advisory, budgetary, and rulemaking, and other functions vested in it, which shall be exercised in accordance with policy and guidelines for weather modification activities as established by the commission.

This statute, enacted in 1981, changed the direction and supervisory authority over the Weather Modification Board from the State Aeronautics Commission to the State Water Commission. Neither the prior statute nor the present statute have been interpreted or analyzed by a court. According to general rules of statutory interpretation, words used in any statute are to be understood in their ordinary sense, unless a contrary intention plainly appears. N.D.D.C. § 1-02-02. Consideration also should be given to the context in which the words of a statute are used and the purpose which prompted the enactment of the statute. Coldwell Banker-First Realty, Inc. v. Meide & Son, 422 N.W.2d 375 (1988). The policy and purpose of N.D.C.C. ch. 61-04.1 is stated in N.D.D.C. § 61-04.1-02:

[W]eather modification shall be subject to regulation and control, and research and development shall be encouraged. To minimize possible adverse effects, weather modification operations shall be carried on with proper safeguards, and accurate information shall be recorded concerning such operations and the benefits obtained therefrom by the people of the state.

This same policy was stated in the predecessor to this statute, N.D.D.C. § 2-07-01.1 (repealed in 1981).

In furtherance of this purpose, the Legislature created the North Dakota Weather Modification Board, now called the Atmospheric Resource Board, pursuant to N.D.D.C. § 61-04.1-04. As it was previously, the North Dakota Atmospheric Resource Board is a division of another state agency. The Legislature clarified in its 1981 enactment of N.D.D.C. § 61-04.1-06 that "[t]he powers, functions, and duties of the board shall be administered under the direction and supervision of the North Dakota state water commission." The next sentence of that section may be considered confusing until examined in the context of the whole section and the rest of the chapter.

The second sentence appears to mean the Board will retain legislative and judicial functions to some degree, along with advisory, budgetary, rulemaking and other functions vested in it. However, these functions must be performed in accordance with policy and guidelines established by the State Water Commission. Thus, this sentence reiterates the message of the first sentence of this section, that all the powers, functions, and duties of the Board (given by statute in N.D.C.C. ch. 61-04.1) shall be administered under direction and supervision of the State Water Commission. Throughout chapter 61-04.1, and in particular, N.D.D.C. § 61-04.1-08, the Legislature has given the Board specific powers and duties. This is not inconsistent with N.D.D.C. § 61-04.1-06 which provides that all powers and functions of the Board are under the supervision and direction of the State Water Commission. Thus, the Atmospheric Resource Board is considered a division of the State Water Commission. In carrying out its duties and functions it is under the direct supervision and authority of the State Water Commission.

You indicated in your letter that the State Water Commission has not developed policies or guidelines for Atmospheric Resource Board activities and has not exercised direction or supervisory control over the Board since enactment of this chapter. The amount of direction or supervision exercised is within the discretion of the supervisory authority. If the Atmospheric Resource Board cannot fulfill its functions and duties without more direction or supervision from the State Water Commission, the Board may wish to take the matter directly to the State Water Commission. Alternatively, the Board could approach the Legislature for further amendments to specifically set out what actions the State Water Commission should take. In your case, it appears that you desire more defined guidelines and policies from the State Water Commission, and therefore, I would advise meeting with it for that purpose.

Sincerely,

Nicholas J. Spaeth

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