

N.D.A.G. Letter to Price (Dec. 11, 1991)

December 11, 1991

Mr. Robert Q. Price
Attorney at Law
Cavalier County Water Resource Board
901 3rd Street
P.O. Box 469
Langdon, ND 58249

Dear Mr. Price:

Thank you for your October 7, 1991, letter regarding whether a water resource district board may charge an entrance fee to a recreational area. I apologize for the delay in responding.

The Cavalier County Water Resource Board ("Board") charges a \$3.00 entrance fee for all motor vehicles entering the Mt. Carmel Dam recreational area. The recreational area includes a beach, a picnic area, and motor home area. For the reasons set forth below, it is my opinion that the Board has only limited authority to charge entrance fees to the recreational area.

It is a basic proposition of law that local governmental entities have only those powers expressly conferred upon them by the Legislature, or those necessarily implied from the powers expressly granted. See e.g. Parker Hotel Co. v. City of Grand Forks, 177 N.W.2d 764, 768 (N.D. 1970); Murphy v. Swanson, 198 N.W. 116, 119 (N.D. 1924). A review of North Dakota law reveals no express authority for a water resource board to charge entrance fees to recreational areas. Therefore, the Board may only charge entrance fees if such authority is necessarily implied from an expressly-granted power.

N.D.C.C. § 61-16.1-09 details the powers granted to water resource districts. Since the statutory language explicitly enumerates the powers given to districts, it is difficult to imply an authority to charge entrance fees. This conclusion is supported by Attorney General's opinions which have concluded that in the absence of specific authority, the government may not charge fees for services. 89 A.G.O. 26; 82 A.G.O. 196; letter from Allen I. Olson to Ward County State's Attorney Richard B. Thomas (June 19, 1973); letter from Allen I. Olson to John O. Garaas, State's Attorney (March 23, 1973); letter from Allen I. Olson to Walter R. Hjelle, commissioner, North Dakota Highway Department (Feb. 2, 1973).

That specific statutory authority is necessary before a local governmental entity may charge fees is further supported by a review of the North Dakota Century Code. N.D.C.C. § 55-08-05 authorizes the Director of Parks and Tourism to establish and collect fees for the use of special services within state recreational areas, and N.D.C.C. § 11-28-05.1 authorizes the board of county park commissioners to collect user fees for facilities and

activities furnished by the county for recreational purposes. Likewise, N.D.C.C. § 23-10-07.1 authorizes those who operate campgrounds, mobile home parks, and trailer parks to charge service fees which reasonable reflect the cost of the services provided. These statutes establish that when the Legislature wishes to grant authority for fee assessment, its does so explicitly.

Therefore, it is my opinion that while the Board may not charge a general entrance fee to the Mt. Carmel recreational facility, the Board may charge reasonable fees for the use of any campground, mobile home park, or trailer park which exists within the recreational facility pursuant to N.D.C.C. § 23-10-07.1. I caution that the Board must comply with the regulatory requirements of N.D.C.C. ch. 23-10. Furthermore, any service fee charged for a campground, mobile home park or trailer park must reasonably reflect the cost of services provided. Whether the amount of the fee charged reasonably reflects that cost is a question of fact upon which I cannot issue a legal opinion.

I hope I have satisfactorily addressed your concerns.

Sincerely,

Nicholas J. Spaeth

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