

N.D.A.G. Letter to Kringlie (April 8, 1992)

April 8, 1992

A. Roger Kringlie
City Attorney
4 North Main Street
PO Box 418
Northwood, North Dakota

Dear Mr. Kringlie:

Thank you for your March 19, 1992, letter requesting an opinion as to whether an advisory vote sought by a city governing body regarding a proposed water and sewer project is binding upon the city governing body.

N.D.C.C. § 40-21-16 enables city governing bodies to hold special elections for advisory purposes. N.D.C.C. § 40-21-16; 1983 N.D. Op. Atty. Gen. 83-34 (a city governing body may call for a special election for the purposes of obtaining an advisory vote by the voters). An advisory vote is, by its nature, advisory only and, therefore, is not binding upon the city governing body.

It is important, however, that the city governing body proceed in accordance with the applicable statutes. For example, under certain circumstances, a city is required to hold an election if it wishes to improve an existing water plant. N.D.C.C. § 40-33-02.

In conclusion, an advisory vote sought by a city governing body regarding a proposed water and sewer project is not binding upon the city governing body. It is necessary, however, for the city governing body to comply with all of the statutes that apply to the particular project it is pursuing.

I trust I have responded to your question.

Sincerely,

Nicholas J. Spaeth

jfl