

LETTER OPINION
93-L-375

February 12, 1993

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

Dear Mr. Sillers:

Thank you for your letter requesting an opinion as to whether an airport authority has sufficient ownership interest in certain property to annex such property to a city. I am sorry for the delay in responding to your request.

N.D.C.C. ? 40-51.2-03 provides that "[u]pon a written petition signed by . . . the owners of not less than three-fourths in assessed value of the property in any territory contiguous or adjacent to any incorporated municipality . . . , the governing body of the municipality . . . may annex such territory to the municipality." N.D.C.C. ? 40-51.2-03. (emphasis added).

An airport authority's power to acquire property through eminent domain proceedings is contained in N.D.C.C. ? 2-06-08.

In the acquisition of property by eminent domain proceedings authorized by this chapter, an airport authority shall proceed in the manner provided by chapter 32-15 of the laws of this state, and such other laws that may now or hereafter apply to the state or to political subdivisions of this state in exercising the right of eminent domain. The fact that the property to be acquired by eminent domain proceedings was acquired by its owner by eminent domain proceedings does not prevent its acquisition by such proceedings by the authority. For the purpose of making surveys and examinations relative to eminent domain proceedings, it is lawful for the authority to enter upon the land, doing no unnecessary damage. Notwithstanding the provisions of any other statute or other law of this state, an authority may take possession of any property to be acquired by eminent

domain proceedings at any time after the commencement of such proceedings. The authority is not precluded from abandoning such proceedings at any time prior to final order and decree of the court having jurisdiction of such proceedings, provided that the authority shall be liable to the owner of the property for any damage done to the property during possession thereof by the authority.

N.D.C.C. ? 2-06-08 (emphasis added). Pursuant to this section, Langdon Municipal Airport Authority filed a complaint in Cavalier County District court seeking fee simple ownership in two specified tracts of land and runway protection zone easements in an additional eight tracts of land. The complaint also sought immediate possession of the property as authorized by N.D.C.C. ? 2-06-08.

An airport authority is entitled to acquire fee simple pursuant to N.D.C.C. ? 32-15-03. N.D.C.C. ? 2-06-08 allows the airport authority to take possession of the property it seeks to acquire by eminent domain proceedings prior to a judgment in the proceedings. However, N.D.C.C. ? 32-15-27 provides that the property does not vest in the plaintiff in an eminent domain proceeding until the final order of condemnation is entered and filed with the register of deeds.

Cavalier County District court issued an "Order for Immediate Possession" May 4, 1992. In its order, the court granted the Airport Authority possession and the right to enter all tracts described in the complaint pursuant to N.D.C.C. ? 2-06-08.

In my opinion, the airport authority would not have "ownership" sufficient to petition for annexation until the property vests with the airport authority after final judgment in the eminent domain proceeding.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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