

**LETTER OPINION
2006-L-08**

February 17, 2006

The Honorable Kari L. Conrad
House of Representative
224 8th St SE
Minot, ND 58701-4038

Dear Representative Conrad:

Thank you for your letter asking several questions relating to North Dakota State University's demolition of a building at the North Central Research Extension Center (Center) near Minot that was formerly the Ward County Poor Farm. For the reasons explained below, it is my opinion that N.D.C.C. § 48-04-01 does not require a political subdivision to offer unused buildings to other political subdivisions before the building is demolished; the State Board of Higher Education (Board) had authority to demolish the building at the Center; N.D.C.C. § 55-02-07 only requires state agencies and political subdivisions to obtain permission to destroy or alter certain significant buildings or artifacts; and N.D.C.C. § 1-08-04.1 requires state officials or entities that own property having historical or artistic significance, except for the Board, to report that property to the State Historical Board.

ANALYSIS

The North Central Research Extension Center presently occupies a site that was formerly a poor farm owned by Ward County. The County discontinued the poor farm and deeded the land to the State of North Dakota for the purpose of operating an agricultural experiment center. North Dakota State University presently maintains the North Central Research Extension Center as an agricultural experiment center. The main housing structure from the former poor farm was demolished to provide space for an agronomy research laboratory and greenhouse.

Your first question concerns N.D.C.C. § 48-04-01 which permits civil townships and incorporated cities to jointly own and use public buildings or grounds. This law is limited to civil townships and those incorporated cities that are located within the civil township boundaries.¹ If the voters authorize joint ownership and use of public buildings by the civil

¹ N.D.C.C. § 48-04-01.

township and incorporated city,² the public buildings and grounds are in the joint custody and control of the governing boards of the city and township.³ Because this chapter is restricted to cities and townships, it does not apply to other political subdivisions⁴ such as counties, nor does it include a state agency.⁵

State law does not require a political subdivision that has sole ownership of a building to first offer the building to another political subdivision before demolishing or selling the building. If there is a building subject to joint custody and control under N.D.C.C. ch. 48-04, then both entities having control of the building would be required to jointly decide whether to destroy the building or make some other use of it. Therefore, it is my opinion that N.D.C.C. § 48-04-01 does not require a political subdivision to offer an unused building to another political subdivision.

You also asked which entity had authority to demolish the building at the Center.⁶ The North Dakota Constitution creates the State Board of Higher Education and authorizes it to control and administer the “state agricultural college and experiment station, at Fargo, with their substations.”⁷ The North Central Research Extension Center is a substation of the State Agriculture College, presently known as North Dakota State University.⁸ Therefore, the State Board of Higher Education has “control and administration” over the North Central Research Extension Center.

Section 15-10-12.1, N.D.C.C., provides in part:

² Id.

³ N.D.C.C. § 48-04-02.

⁴ Political subdivision is a term relating to local government as distinguished from the state government. See, for example, its definition in N.D.C.C. § 44-04-17.1(10) as including “any county or city, . . . and any airport authority, township, school district, park district, rural fire protection district, water resource district, solid waste management authority, rural ambulance service district, irrigation district, hospital district, soil conservation district, recreation service district, railroad authority, or district health unit.”

⁵ The term state agency generally means an administrative division in the executive branch of state government. For example, the term has been defined to mean “each board, bureau, commission, department, or other administrative unit of the executive branch of state government.” N.D.C.C. § 28-32-01(2).

⁶ You also ask whether the wording of the deed made the State or North Dakota State University the owner of the land and buildings. You did not provide a copy of the deed. Regardless, land deeded to a state agency is still considered land owned by the State. Cf. N.D.A.G. 2002-L-69.

⁷ N.D. Const. art. VIII, § 6(1)(b).

⁸ N.D.C.C. § 15-10-01(2).

The state board of higher education may authorize campus improvements and building maintenance on land under the control of the board which are financed by donations, gifts, grants, and bequests if the cost of the improvement or building maintenance is not more than three hundred eighty-five thousand dollars. The consent of the legislative assembly is required for construction of any building financed by donations, gifts, grants, and bequests and for campus improvements or building maintenance financed by donations, gifts, grants, and bequests if the cost of the improvements or maintenance is more than three hundred eighty-five thousand dollars.

That section also authorizes the budget section of the Legislative Council to approve construction projects exceeding \$385,000 in certain circumstances.⁹ During the most recent legislative session, the Legislature appropriated money to the Board to construct a new agronomy research laboratory and greenhouse at the North Central Research Extension Center.¹⁰ Therefore, the Board had specific legislative approval and funding to make this capital improvement which implicitly authorized demolishing the old building to make way for the laboratory and greenhouse.¹¹

You also asked about historical site reporting requirements. Section 55-02-07, N.D.C.C., protects historical or archeological artifacts or sites owned by the state or its political subdivisions.¹² This protection, however, is limited to artifacts or sites which “in the opinion of the director of the state historical society [are] significant in understanding and interpreting the history and prehistory of the state.”¹³ These sites or artifacts “may not be destroyed, defaced, altered, removed, or otherwise disposed of in any manner without the approval of the state historical board,” with a limited exception regarding public safety.¹⁴ The statute further requires the director to notify the appropriate governing official that the director has found a site or artifact to have significance.¹⁵ Both the director and the state

⁹ N.D.C.C. § 15-10-12.1.

¹⁰ 2005 Senate Bill No. 2020; Testimony and reports, 2005 N.D. Sess. Laws ch. 48, NDSU Agriculture Major Capitol Projects, Branch Research Centers; NDSU Agriculture, Agency Overview: North Central Research Extension Center - Minot; Report by North Dakota Legislative Council - Dept. 628 - Branch Research Centers (Feb. 25, 2005).

¹¹ See also Hearing on S.B. 2023 Before House Government Performance Division of the House Appropriations Committee, 2005 N.D. Leg. (Mar. 8) (Statement of Jay Fisher, Director of the North Central Research Extension Center) (indicating the intent was to tear down one or two old buildings and to build a new building rather than remodel an old one).

¹² N.D.C.C. § 55-02-07.

¹³ Id.

¹⁴ Id.

¹⁵ Id.

agency or political subdivision must cooperate to identify reasonable alternatives to destroying or altering significant sites or artifacts.

Section 55-02-07, N.D.C.C., implies that there is a requirement to report historical artifacts or sites to the State Historical Board, but curiously the statute imposing this requirement is in title 1 of the Century Code.¹⁶ The requirement to document and inventory property having historical or artistic significance applies to state officials or entities that hold or acquire such property on behalf of the state, “[e]xcept for the board of higher education and state institutions under the jurisdiction of the board.”¹⁷ Therefore, while N.D.C.C. § 55-02-07 cannot be effective unless the director of the State Historical Society has knowledge concerning historical artifacts or sites, the legal duty to report possession of such artifacts or sites specifically does not apply to the State Board of Higher Education and institutions under its control such as the North Central Research Extension Center.

You further asked what factors should be taken into account when a state agency or a political subdivision is working with the director of the State Historical Society to identify or implement any “reasonable alternative to destruction or alteration” of a historical artifact or site before the State Historical Board may approve its demolition or alteration.¹⁸ The Legislature has granted the director and the State Historical Board a broad range of discretion when addressing these issues, and their decision must necessarily be based upon the unique facts of each situation. While the statutes do not identify the factors to be considered when determining whether there is a reasonable alternative to destruction of a historic site, it would generally be reasonable for the State Historical Board to consider, among other things, whether the alternative is feasible, whether the alternative is safe for the public or for the agency’s employees, and whether the alternative promotes or interferes with the agency’s duties.

Sincerely,

Wayne Stenehjem
Attorney General

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This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.¹⁹

¹⁶ N.D.C.C. § 1-08-04.1.

¹⁷ Id. (emphasis supplied).

¹⁸ N.D.C.C. § 55-02-07.

¹⁹ See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).