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April 15, 2015

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Attorney General Wayne K. Stenehjem
Office of Attorney General
600 E. Boulevard Ave.
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Bismarck, North Dakota 58505-0040

**RE: Cass County Joint Water Resource District
FM Flood Risk Management District No. 1 Project**

Dear Attorney General Stenehjem:

I am writing as city attorney for the City of Reile's Acres, Cass County, North Dakota, for purposes of requesting a written opinion pursuant to N.D.C.C. § 54-12-01 rising out of the apparent decision to proceed with FM Flood Risk Management District No. 1 Project by the Cass County Joint Water Resource District.

Please be advised that the undersigned is legal counsel for two (2) other political subdivisions, namely Pleasant Township, Cass County, North Dakota, and Stanley Township, Cass County, North Dakota. As legal representative for all three (3) political subdivisions, certain legal inquiries were simultaneously made of the Cass County Joint Water Resource District, and for that reason the attachments will reference that collective effort.

I understand that N.D.C.C. § 54-12-01 gives rise to opinions for city attorneys or the governing body of a city in the state of North Dakota. These inquiries are made on behalf of the City Council of Reile's Acres, Cass County, North Dakota. Reile's Acres will be assessed \$902,956.32 under the FM Flood Risk Management District No. 1 Project by the Cass County Joint Water Resource District which must be passed on to its landowning citizens as noted hereafter.

I have attached a number of documents which are identified in the following table entitled, "Pertinent Documents to FM Flood Risk Management District No. 1 Project":

Pertinent Documents to FM Flood Risk Management District No. 1 Project	
Description of Documents	Comments, if any
<p>Representative envelope containing:</p> <p>a ballot [sample - 2 from website],</p> <p>Ballot Information & Instructions,</p> <p>letter to: Landowners with the Proposed FM Flood Risk Management District No. 1 from Cass County Joint Water Resource District;</p> <p>CD entitled “Flood Risk Management District No. 1, February 2015, Engineer’s Report Assessment List;</p> <p>Return envelope.</p>	<p>Presumptively, all affected landowners and political subdivisions received comparable documents</p>
<p>Objection to FM Flood Risk Management District No. 1 Project dated March 31, 2015, with Attachments A-D {the undersigned’s sole copy; some highlighting added by the undersigned}</p>	<p>The comments are supported by the actual documents provided by the Cass County Joint Water Resource District following the March 18, 2015, request for public records – see Exhibit A of the “Objection”.</p>

The City of Reile’s Acres is being subjected to a requirement for taxation of its citizens in a non-existent project which appears to directly violate the Constitution of North Dakota and multiple statutes, as well as the inalienable rights of its property-owning citizens [by being subjected to footing the bill through special assessments and general property taxes and/or loss of voting rights].

The Cass County Joint Water Resource District proposes creation of a special assessment district for a non-existent project known as the FM Flood Risk Management District No. 1 Project.

The substantial questions posed to the Attorney General of the State of North Dakota

generally follow the areas of objection which include an expanded discussion as noted in the “Objection” [to the extent there is underlying discussion, or attribution to the public records of the Cass County Joint Water Resource District in the March 31, 2015, “Objection”, there will be a notation to the reference point(s) within brackets after each question posed]:

1. In the absence of any agreement with any federal or state agency, or any combination thereof, for the construction of the FM Flood Risk Management District No. 1 Project, how can the Cass County Joint Water Resource District claim the ability to access federal or state funds? [*Objection, page 1, 3*]
2. In the absence of any agreement with any federal or state agency, or any combination thereof, for the construction of the FM Flood Risk Management District No. 1 Project, how can the Cass County Joint Water Resource District claim the ability to fund the project using sales tax revenues generated by Cass County, North Dakota, and/or Fargo, North Dakota, when N.D.C.C. § 61-16.1-15 only permits creation of a project “through issuance of improvement warrants or with funds raised by special assessments, general tax levy, issuance of revenue bonds, or by a combination of general ad valorem tax, special assessments, and revenue bonds”? [*Objection, page 1, 3*]
3. The Cass County Joint Water Resource District has conceded that no project yet exists, and also, there are no “profiles, plans, and specifications of the proposed project and estimates of the total cost thereof” prepared by a registered engineer as required by N.D.C.C. § 61-16.1-17, so how can the Cass County Joint Water Resource District waive North Dakota’s statutory requirements, and proceed? [*Objection, page 1, 5, 7, 8, 9, 14*]
4. On what legal basis can the Cass County Joint Water Resource District ask the “property owners .. co-sign a loan” as is legally being suggested be done by its registered engineer, Eric C. Dodds, PE, on December 11, 2014 – the only engineer’s report known to exist? [*Objection, page 7*]
5. When N.D.C.C. § 61-16.1-17 mandates the registered engineer determine “the probable share of the total costs that will be assessed against each of the affected landowners in the proposed project assessment district”, and it is not done, how can the Cass County Joint Water Resource District proceed? [*Objection, page 7, 8*]

6. When N.D.C.C. § 61-16.1-18 requires publication of a notice of hearing once each week for two consecutive weeks in certain official newspapers, and such was not done, how can the Cass County Joint Water Resource District proceed? *[Objection, page 10]*
7. When North Dakota's laws relating to water resource district projects identify a primary duty to notify "each affected landowner .. as shown on the tax roll" [N.D.C.C. § 61-16.1-18], how can the Cass County Joint Water Resource District elevate the status of non-landowning political subdivisions into a superior role under the guise of an indirect benefit such the indirect benefit has greater say than the "affected landowners"? *[Objection, page 8, 10]*
8. Can the Cass County Joint Water Resource District subject any political subdivision of the State of North Dakota to pay an indirect benefit which is claimed to arise out of the existence of "Infrastructure", "Community & Lifestyle", and "Business & Economy"? While I will refrain from voicing my personal and legal opinion, included in the indirect benefit to be paid by the political subdivisions, and levied upon property owners by general tax levy, are such things as the "mental health" of the political subdivision's citizens and the "stigma" attached to a flooded community – virgin areas of taxation never before advanced in these United States of America so far as I can discover, and impossible of being quantified for property tax valuations or special assessment levy. *[Objection, page 10, Exhibit B-4, page 15]*
9. Can the Cass County Joint Water Resource District subject any political subdivision of the State of North Dakota to pay an indirect benefit so as to allow the municipality to avoid borrowing limits imposed upon such municipalities by N.D.C.C. § 40-05-01(5), N.D.C.C. Title 21 [which would not allow for special assessment projects in this manner], or other law(s)? *[Objection, page 10]*
10. Can the Cass County Joint Water Resource District take away the landowner's vote attributed to each dollar of direct benefit received by the landowner under the guise of assigning a political subdivision an indirect benefit [with all political subdivision indirect benefit equaling \$483,333,333.34 with the City of Fargo and Cass County, North Dakota, paying an indirect benefit of \$426,952,247.77 – 58.89% of the non-existent project for \$725,000,000.00 {see page 451 of 451 on CD provided}, and more than *One Billion Dollars* of the non-existent project

still not funded at all]? *[Objection, page 5, 10, 12]*

11. Can the Cass County Joint Water Resource District advise landowners that Fargo Sales Tax or Cass County Sales Tax proceeds will pay the special assessment bonds when N.D.C.C. § 61-16.1-21 requires a different source of funds – “(a)ny county, township, or city assessed in its corporate capacity for benefits received shall provide for the payment of such assessments, installments thereof, and interest thereon from its general fund or by levy of a general property tax against all the taxable property therein in accordance with law”? *[Objection, page 11, 12]*
12. Can the Cass County Joint Water Resource District advise landowners that Fargo Sales Tax or Cass County Sales Tax proceeds will pay the special assessment bonds when Article X, § 18 of the North Dakota Constitution prohibits gifts of public monies to pay the landowner’s private debt(s) – “neither the state nor any political subdivision thereof shall otherwise loan or give its credit or make donations to or in aid of any individual, association or corporation except for the reasonable support of the poor ...? See also, Stutsman v. Arthur, 16 N.W.2d 449, 454 (N.D. 1944) which determined that if the result of the efforts of public entities is chiefly that of private benefit, an incidental or even ostensible public purpose will not save its constitutionality. In the instant case, the “registered engineer” is proposing that every penny to be privately paid under special assessment, be actually paid with public funds belonging to either Cass County, North Dakota, and the City of Fargo, Cass County, North Dakota. *[Objection, page 11, 12]*
13. In that N.D.C.C. § 61-16.1-24 provides that only “(a)fter the requirements of this chapter have been satisfied and a contract and bond for any work for which a special assessment is to be levied have been approved by the water resource board (may) the board . direct special assessments to be levied for the payment of appropriate costs ..”, is the Cass County Joint Water Resource District estopped until there exists both an approved project [by any entity, federal, state, or district water resource district] AND a signed construction contract/bond as required by law for any work? *[Objection, page 13]*
14. In that N.D.C.C. § 61-16.1-24 provides a statutory limitation – “(i)n no event shall any contract or contracts be awarded which exceed, by twenty percent or

more, the estimated cost of the project as presented to and approved by the affected landowners” – is the Cass County Joint Water Resource District estopped until there exists both an approved project [by any entity, federal, state, or this water resource district] AND a proposed construction contract/bond within the twenty percent (20%) cap as required by law for any work?
[Objection, page 14]

15. Can the Cass County Joint Water Resource District initiate a bonding process that will compel the Cass County Commission to pay each year’s total bond installment(s) when the Cass County Joint Water Resource District does not attempt to collect any special assessments because N.D.C.C. § 61-16.1-25 mandates “(w)henever all special assessments collected for a project are insufficient to pay the special assessment warrants issued against such project, coming due within the following thirteen months, with interest, the board of county commissioners of each of the counties wherein the district lies shall advance to the district project warrant fund an amount sufficient to pay the deficiency attributable to the benefited property in each county”? Please be advised this non-existent project involves two (2) counties: Richland County and Cass County. *[Objection, page 15]*
16. Can the Cass County Joint Water Resource District initiate a process which can only result in either Cass County or Richland County, or both counties, being compelled under N.D.C.C. § 61-16.1-25: (A) to pay the deficiency attributable to the benefited property in each county, and (B) to lend monies and compel taxation for its repayment even against property owners outside of the special assessment project’s area – “the board of county commissioners of each of the counties shall levy a general tax upon the taxable property in the county”? *[Objection, page 15]*
17. Can the Cass County Joint Water Resource District sell bonds for the non-existent project and use any portion of the proceeds for another purpose, such as proposed by their possible bond attorney to “refund the prior notes from Cass County and then spend the remaining bond proceeds on the FM Diversion project”? *[Objection, page 16]*
18. Can the Cass County Joint Water Resource District create a special assessment lien on private property without strict compliance with N.D.C.C. Chap. 61-16.1?

19. Can the Cass County Joint Water Resource District create a new system of general property taxation predicated upon a non-existent project which will directly impact affected landowners, any political subdivision within the boundaries of the special assessment project, and also, non-affected landowners outside the special assessment project?

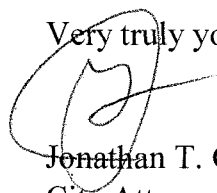
The City of Reile's Acres does not want to participate in, or be exposed to possible liability for, a flawed process whereby it, as a political subdivision of the State of North Dakota, is being asked to usurp a landowner's property or civil rights and/or participate in a unauthorized form of taxation.

According to published reports, Cass County, North Dakota, and the City of Fargo, North Dakota, have voted their indirect benefit in favor of the FM Flood Risk Management District No. 1 Project – a combined total more than the statutory 50% (presumptively 58.89%) – however, your opinion is not rendered moot as the Cass County Joint Water Resource District has not yet done any act to cause economic harm, only aggravation, to affected landowners.

The City of Reile's Acres requests your opinion as to these issues that arise out of the joint actions of various water resource districts.

If there is anything that I can do to assist your inquiry and deliberations, please make the request.

Very truly yours,



Jonathan T. Garaas
City Attorney

JTG:j
Enclosures
cc: Reile's Acres
Stanley Twp.
Pleasant Twp.