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STATE OF MINNESOTA

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November 29, 2004

Daniel J. Crothers
Improvement District
Pelican Group of Lakes
P.O. Box 336
Pelican Rapids, MN 56572-0336

Dear Mr. Crothers:

Thank you for your correspondence of October 2, 2004 concerning voting procedures applicable to a lake improvement district (LID) created pursuant to Minn. Stat. § 103B.501.

You point out that Minn. Stat. § 103B.571, subd. 3 states:

Subd. 3. Agenda:

- (a) At the annual meeting the district property owners present shall:
 - (1) elect one or more directors to fill any midterm vacancies in the board of directors;
 - (2) approve a budget for the fiscal year;
 - (3) approve or other business that comes before them.
 - (4) take up and consider with expiring terms.
- (b) At the annual meeting all district property owners, including absent members as provided in the order establishing the district, shall elect one or more directors for board positions with expiring terms.

The term "property owner" for purposes of the Lake Improvement District Law is defined in Minn. Stat. § 103B.505, Subd. 6. as "the owner of real property within the district, or the buyer under contract for deed of property in the district."

You seek the Opinion of this office on several questions relating to voting of members at LID meetings. Specifically you ask:

Question 1: Can a LID establish voting procedures that give one vote to each parcel of land in the district rather than one vote per named owner or owners of the parcel?

If the answer to question 1 is negative, what are the answers to the following questions?

Question 2: Does the term "property owner" include all natural persons who are listed on the deed or contract for deed, even if they are less than the age of majority?



Question 3: Is there any limit to the number of natural persons who can be listed on a deed or contract for deed who are considered a "property owner" and are therefore entitled to notice of, and vote at, annual meetings?

Question 4: Does a "property owner" get more than one vote if he, she, they or it own more than one separately identified parcel of real property within PGOLID?

Question 5: Does the answer to the question immediately above change if any of the properties have some owners who are the same, but also have different owners? For example, parents A and B own parcel 1 together with their children C and D. An adjacent parcel 2 within PGOLID is owned by A, B and C, while adjacent parcel 3 within PGOLID is owned by A, B and D.

Question 6: How many "property owners" are entitled to vote if a parcel within PGOLID is owned by a natural person and a legal entity such as a trust?

Question 7: Who is the "property owner" when real property within PGOLID is held by a trust? Is it the trustee(s) or the beneficiary or beneficiaries, or all or some of them?

Question 8: Does a trust, partnership or corporation "property owner" get more than one vote if the respective entity has multiple trustees (or beneficiaries), multiple partners or multiple shareholders? If so, how many votes and is there a maximum?

Question 9: If a natural person has lost his or her right to vote in state elections through judgment of a court of competent jurisdiction, does that person lose their "property owner" voting rights?

You included with your letter a copy of a letter dated April 9, 2002 from the undersigned to the Ottertail County Attorney which addressed the principles underlying several of your current questions. As noted in that letter, the Attorney General's Office has limited jurisdiction under the law. For instance, it has authority to provide legal opinions to attorneys for local units of government pertaining to their duties, but is not authorized to provide legal advice or opinions to other local government officials and bodies, or to private persons or organizations. Notwithstanding those limitations, I can offer the following comments which I hope you find helpful.

First, as noted in the April 9, 2002 letter, statutory references to actions to be taken by "property owners" are usually interpreted to mean all individual owners *per capita*, without regard to the size or number of parcels owned.¹ Absent other qualifying language, the term

¹ See, e.g., *Beck v. Council of City of St. Paul*, 235 Minn. 56, 50 N.W.2d 81 (1951). Op. Atty. Gen. 602-I, September 19, 1947 (copy enclosed). See also Minn. Stat. § 645.08(4) (Law conferring authority on three or more persons construed to confer authority upon majority of such persons).

would also include legal entities such as corporations.² I am not aware of any subsequent authorities that would change the views expressed in that letter.

Second, a corporation, partnership or trust is generally considered a single legal entity which may own property in its own name regardless of the number of directors, partners or trustees that manage the property or entity. *See, e.g.*, Minn. Stat. §§ 300.08, 302A.161, 317A.161, 323A.1001, 323A.0204 (2002), *Edmondson v. Edmondson*, 203 Minn. 157, 226 N.W.2d 615 (1975).

Third, Minn. Const. Art. VII § 1 and Minn. Stat. § 201.014 (2002) prescribe the qualifications for voting in official government elections in the state. These include U.S. citizenship, age of 18 years or more, and residence in Minnesota. Minors, persons declared legally incompetent and convicted felons who have not been restored to civil rights are not permitted to vote in such elections. *See also* Minn. Const. Art. I § 17 which provides:

No religious test or amount of property shall be required as a qualification for any office of public trust in the state. No religious test or amount of property shall be required as a qualification of any voter at any election in this state; nor shall any person be rendered incompetent to give evidence in any court of law or equity in consequence of his opinion upon the subject of religion.

The legislature has not, however, limited participation in the creation and management of lake improvement districts to persons qualified to hold public office or to vote in governmental elections. Minn. Stat. §§ 103B.521, subd. 1(b) and 103B.545 (2004) authorize petitions for creation of a district, and calling for a referendum on its creation to be submitted by a specified percentage of “property owners.” However, Minn. Stat. § 103B.545, subd. 1 and 3 also provide that, upon submission of a qualifying petition, a referendum vote on establishment of the LID must be held among the “qualified voters *and property owners.*” (Emphasis added.)

As noted above, section 103B.571 which requires an annual meeting of a district, authorizes certain actions to be taken by the “district property owners present,” and permits all district property owners including “absent members” to vote for members of the board of directors. That provision makes no reference to “qualified voters” as the term is used in Minnesota election law. Therefore, the fact that a person is not a qualified voter under general state law would not seem in itself to disqualify any person from voting at the annual meeting of a LID if he or she owns property in the district. However, in the case of minors and persons declared incompetent by the courts, legal rights pertaining to their property would ordinarily be exercised on their behalf by a parent or legal guardian. *See* Minn. Stat. §§ 524.5101 *et seq.* (2004).

² *Cf. Reiss Greenhouses, Inc. v. Hennepin County*, 290 N.W.2d 785 (Minn. 1980) (immaterial under Green Acres Law whether owner of land is individual or corporation); *Op. Atty. Gen.* 602-I. May 1, 1952 (municipal corporation is counted as owner for purpose of drainage petitions).

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Finally, I am not aware of any authority for a lake improvement district to modify the statutory voting rights of its constituents.

I thank you again for your letter. I hope these comments are helpful to you.

Very truly yours,

A handwritten signature in cursive script that reads "Kenneth E. Raschke, Jr. (CBE)".

KENNETH E. RASCHKE, JR.
Assistant Attorney General

(651) 297-1141 (Voice)
(651) 297-1235 (Fax)

Enclosure
AG: #1324439-v1

O.F.C.

See copy of ...

602-i

September 19, 1947

Feb 11-1939

Created #5, 1947

Mr. Russell L. Frazee
Renville County Attorney
Olivia, Minnesota

Dear Mr. Frazee:

Your letter of September 17 calls attention to Laws 1947, Chapter 143, Section 3, M. S. A., Sec. 106.031. This is in the chapter of the statutes relating to drainage and this section defines the requirements of a valid petition for establishment of a public drainage ditch. It is required that "Such petition shall be signed by not less than a majority of the resident owners of the land described in the petition or by the owners of at least 51 percent of the area of such land."

You have for consideration these

FACTS:

The land described in the petition includes land owned by three brothers as tenants in common. It also includes land formerly owned by a person now deceased, whose estate is pending for settlement in the probate court and in the ownership of which land eight heirs have succeeded the deceased.

You have for consideration these

QUESTIONS:

1. Is each of the three cotenants mentioned to be considered a "resident owner"?
2. Is each of the heirs mentioned to be considered a "resident owner"?
3. In the case of real estate owned in joint tenancy, is

over the ... in ...

*Approved
RAS*

September 19, 1947

each joint tenant to be considered a "resident owner"?

OPINION:

A resident owner must be an actual resident of land described in the petition. See opinion of the Attorney General, dated February 21, 1939, File 6021, copy of which is enclosed.

It appears to me that the term "owners of land" includes each tenant in common, each heir of a deceased owner and each joint tenant. See 30 W & P 632, 634.

On the definition of the term "owner" as applied to real property, many cases may be found on both sides of the question under consideration. 50 C. J., Property, Sec. 49, p. 772-776. But it is my opinion that as the term is used in the statute which we are considering, any person having a substantial interest in the real property whether it is an entire interest or undivided, in common or joint, is to be considered an owner.

Yours very truly

J. A. A. BURNQUIST
Attorney General

CHARLES E. HOUSTON
Assistant Attorney General

CEH:MR

Enc.