

May 3, 1983

Murray G. Sagsveen
Special Assistant
Attorney General
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Bismarck, ND 58502-1695

Dear Murray:

Thank you for your letter of April 18, 1983, concerning rules the Board of Directors of the Garrison Diversion Conservancy District wish to adopt.

I am in agreement with you that Chapter 28-32 of the North Dakota Century Code does not apply to the Garrison Diversion Conservancy District. Section 61-24-02, N.D.C.C., states, in part as follows:

Such district shall be a governmental agency body politic and corporate with the authority to exercise the powers specified in this chapter, or which may be reasonably implied.

Obviously, the Legislature, through the use of the words "body politic and corporate" intended the Garrison Diversion Conservancy District to be a political subdivision rather than an administrative unit or administrative district of the Executive Branch of State Government. As Chapter 28-32, N.D.C.C., is applicable only to administrative units of the Executive Branch of state government, it does not apply to the Garrison Diversion Conservancy District.

However, it would be my recommendation that the Garrison Diversion Conservancy District follow Chapter 28-32, N.D.C.C., in adopting and promulgating rules. Such a procedure would protect the District should a court of law disagree with my opinion and hold the Garrison Diversion Conservancy District to be an administrative agency under Chapter 28-32, N.D.C.C.

Furthermore, the rulemaking procedures contained in the Administrative Agencies Practices Act are geared toward proper due process considerations in adopting administrative rules. I have previously advised other adminis-

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trative agencies which are not subject to Chapter 28-32, N.D.C.C., to, nonetheless, follow the procedures outlined in this chapter.

Sincerely,

Robert O. Wefald

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