

USE OF POLITICAL SUBDIVISIONS AND OTHER REFERENCES FOR UNITS OF LOCAL GOVERNMENT

This memorandum was requested to review statutory usage of terms describing units of local government, such as political subdivision, municipality, taxing district, and similar references.

Because existence and powers of political subdivisions are limited to authority specifically provided by law, the Legislative Assembly has enacted a vast body of statutory provisions regulating and empowering political subdivisions. References to political subdivisions occur throughout the North Dakota Century Code and are used in a broad range of ways. Within the Century Code, words derived from the root "municipal" appear 1,196 times, the phrase "political subdivision" appears 844 times, "governmental unit" appears 58 times, "local government" appears 121 times, and "taxing district" appears 76 times. There are several other combinations of words and phrases used in statutes to describe political subdivisions.

The term "political subdivision" is defined in the Century Code 15 times. Included are the following:

Section 2-04-01(5)

"Political subdivision" means any county, city, park district, or township.

Section 6-09.4-03(5)

"Political subdivision" means:

- a. A local governmental unit created by statute or by the Constitution of North Dakota for local governmental or other public purposes.
- b. The state department of health, or any other state agency or authority, or any member-owned association or publicly owned and nonprofit corporation:
 - (1) Operating any public water system that is subject to chapter 61-28.1.
 - (2) Operating any facility, system, or other related activity that is eligible for financial assistance under chapter 61-28.2.
- c. The Bank of North Dakota for purposes of the revolving loan fund program established by chapter 61-28.2.
- d. The state water commission for purposes of the revolving loan fund program established by chapter 61-28.1.
- e. A qualified borrower within the meaning of 26 U.S.C. 54(j)(5) [Pub. L. 109-58; 119 Stat. 995].

Section 11-37-01(3)

"Political subdivision" means any county, city, or other unit of local government. The term includes a job development authority created under chapter 11-11.1 or 40-57.4.

Section 21-02-01(1)

"Political subdivision" means a local governmental unit created by statute or by the Constitution of North Dakota for local governmental or other public purposes.

Section 23-29-03(12)

"Political subdivision" means a city, county, township, or solid waste management authority.

Section 26.1-21-01(4)

"Political subdivision" means a county, township, park district, school district, city, and any other unit of local government which is created either by statute or by the Constitution of North Dakota for local government or other public purposes.

Section 26.1-22-01(5)

"Political subdivision" means all counties, townships, park districts, school districts, cities, and any other units of local government which are created either by statute or by the Constitution of North Dakota for local government or other public purposes.

Section 37-19.1-01(6)

"Political subdivision" means counties, cities, townships, and any other governmental entity created by state law which employs individuals either temporarily or permanently.

Section 40-47-01.1(11)

As used in this section, "other political subdivision" means a political subdivision, not including another city, which would otherwise have zoning or subdivision regulation jurisdiction.

Section 54-40.5-02(2)

"Political subdivision" means a city, township, city park district, school district, or other unit of local government or special district or authority in this state.

Section 54-60.1-01(6)

"Political subdivision" means a unit of local government in this state which has direct or indirect authority to grant a business incentive. The term includes any authority, agency, special district, or entity created by, authorized by, under the jurisdiction of, or contracting with a political subdivision.

In many of the definitions, undefined phrases such as "unit of local government," "local governmental unit," "special district," or "governmental entity" are employed in an apparent attempt to expand coverage of the definition to include entities not specifically listed. In one instance, a reference is made to units of government created by statute, which creates uncertainty in whether entities created by voter approval would be included.

Because a chapter of statutory law may relate to one or more kind of political subdivision, there are numerous examples of definitions that are expansive or restrictive to include the political subdivisions to which the chapter of law applies. This is a convenient method for a drafter to avoid repeating a list of political subdivisions in the text of a chapter. However, when a term is defined in several different ways in several chapters, and the term is used in a chapter in which it is not defined, there is uncertainty as to which, if any, of the several definitions of the term should apply.

One of the terms most likely to create confusion is "municipality." For example:

Section 2-06-01(9)

"Municipality" means any county, city, town, park district, or public body of this state.

Section 11-36-01(4)

"Municipality" means any political subdivision of this state.

Section 21-03-01(3)

"Municipality" means a county, city, township, public school district, park district, recreation service district, or rural fire protection district empowered to borrow money and issue written obligations to repay the same out of public funds or revenue.

Section 40-01-01(4) (This definition applies to all of Title 40.)

"Municipal corporation" or "municipality" includes all cities organized under the laws of this state, but shall not include any other political subdivision.

Section 40-40-02(2)

"Municipality" means any city or park district in this state.

Section 40-57-02(1)

"Municipality" means counties as well as municipalities of the types listed in subsection 4 of section 40-01-01 and, in the case of parking projects, municipal parking authorities created pursuant to section 40-61-02 and the public finance authority or any successor in interest to the public finance authority for the purpose of issuing revenue bonds under this chapter. In acting as a municipality under this chapter, the public finance authority or its successor in interest shall follow the provisions of this chapter to the extent applicable or practicable but it need not comply with the notice and hearing provisions contained in sections 40-57-04 and 40-57-04.1 or the provisions of section 40-57-10. In the event of a conflict between the provisions of this chapter and chapter 6-09.4, the provisions of chapter 6-09.4 govern.

Section 40-57.1-02(2)

"Municipality" means counties as well as municipalities of the types listed in subsection 4 of section 40-01-01.

Section 40-58-01.1(16)

"Municipality" means any incorporated city in the state.

Section 57-02-01(9)

"Municipality" or "taxing district" means a county, city, township, school district, water conservation and flood control district, Garrison Diversion Conservancy District, county park district, joint county park district, irrigation district, park district, rural fire protection district, or any other subdivision of the state empowered to levy taxes.

The definitions reviewed in this memorandum are contained in sections that limit application to the chapter, title, or section in which they appear. However, courts have referred to such definitions for assistance in interpreting provisions outside the applicable chapter, title, or section. The North Dakota Supreme Court has had many occasions to seek an appropriate definition for a word or phrase employed in a statute when no definition is provided. The court has said "[w]hen words or phrases are defined by statute, that definition may be relied upon in construing the meaning of those words or phrases in a similar statute." *Larson v. Baer*, 418 N.W.2d 282 (N.D. 1988).

The first chapter of the Century Code contains statutory provisions of general application, one of which is:

1-01-09. Word defined by statute always has same meaning.

Whenever the meaning of a word or phrase is defined in any statute, such definition is applicable to the same word or phrase wherever it occurs in the same or subsequent statutes, except when a contrary intention plainly appears.

CONCLUSION

There appears to be some potential for uncertainty in existing statutory definitions of terms referring to political subdivisions. Revision of Century Code usage of terms relating to political subdivisions would be a substantial undertaking. Because definitions of political subdivisions are tailored to apply within certain chapters but may also be applied in other chapters, careful review of hundreds of sections of law would be required.