



Grass Roots Report

ND Association of Township Officers
Finley, ND 58230

NDTOA

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Newsletter Editor
Notes...

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The Official Newsletter of the ND Township Officers Association • NATaT Member

2003 Annual Meeting of the NDTOA Well Attended

NDTOA members from 28 county associations gathered in Minot's new *Sleep Inn & Suites* to transact annual meeting business. President Don Malcomb called the meeting to order with a near capacity crowd in the Cinema 5 Theater at Dakota Square Mall.



District 6 Director Bob Forward, Nolan Verwest, and District 2 Director Ralph Olson relax at the registration table.

Loren Engebretson, President of the Minnesota Township Officers Association, was present for the opening ceremonies. He recited his tribute to a flag called "Under God We Fly" and led us in singing *God Bless America*.

NDTOA committees reported on the annual activities of each committee. Our legal counsel, Tom Moe reviewed his involvement with representatives of the Internal Revenue Service and the need to comply with federal laws concerning filing the correct forms.

Secretary Ken Yantes reported on a couple of bill actions from the 2003 legislative session and how the changes affect township officers. He indicated the need to maintain vigilance in the future and thanked the association for their determination to keep informed and involved with ND legislative activities.

Bea Wall, NATaT Director, urged us to be active in both state and national policy changes as they affect county and township roads here in North Dakota. She updated

us on the legal battles in Washington. Special attention should be given to the roadless lawsuit involving the US Forest Service and the ND Attorney General in Federal Court presently.



Senator Byron Dorgan greets Secretary Ken Yantes and President Donny Malcomb.

Senator Byron Dorgan updated us on the current proposals before the US Senate and told us of what his plans were for his future work in the Senate. He held a question and answer period where NDTOA members were able to enter into a dialogue with him.

Dennis Fewless from the ND Health Dept. gave a slide show which indicated

the concerns of the Department with the shortcomings of the ND State laws concerning confined animal feeding operation regulations on water quality and odor control on multiple lot operations.



Al Klamon and Rhonda Kingsley, representatives of the IRS, held a long and informative discussion on filling out the proper federal forms for township officials.

The representatives went through a working example of how it is supposed to be done.

For more information attend a workshop to be held in your area in mid February—IRS representatives will be there!

Non-filing may result in penalties and interest.

Annual Meeting, cont'd on page 3



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President's Message *Donny L. Malcomb*

Greetings! Winter is upon us in this part of the state with cold weather and 16" of snow on the ground. However, the days are getting longer and more daylight makes all of the other winter conditions more tolerable.

Thanks to all of you wonderful people who took time off to attend our annual convention in Minot during December. Despite all the difficulties with the new construction of Sleep Inn & Suites, I believe accommodations were quite comfortable and adequate.

A big special thanks to the owners of the facility—Vance and Arlene Castleman for personally working our convention and making it all go smoothly. Also thanks to them for donating a picture and a night's stay at the Sleep Inn & Suites for our banquet auction. Thanks to all who donated items for the auction. This helps tremendously in paying for our annual convention, and I believe also adds to the fun of the convention. Thanks "COLONEL GENE GJERKE" for auctioneering.

A big thank you to our entertainer, Kelly Volk of Sherwood, for her excellent singing performance at the banquet and to Aaron Malcomb of Minot who entertained us with his bagpipe music.

Let's not forget the special presentation by Senator Byron Dorgan who addressed our assembly Monday noon. All these people made our annual meeting so much more enjoyable, and I believe, confirmed to those township officers that attended that they were glad they came.

For those of you who didn't make it, consider attending the next annual meeting December 2004 in Bismarck.

In other business we received several letters from supposedly township officers across the state describing problems in their township and/or neighboring townships. The problem with these letters are they were anonymous—no signatures or addresses.

I'm sure they were legitimate complaints, but because of their anonymity we decided not to address them. In the future, please give us your name and address so that we may follow up on these problems and obtain more information.

Your name and address will remain anonymous with us and will not be used when addressing your problem. To those who sent the anonymous letters—if you would like to resubmit your problems with your name and address we would be happy to try to address the situation.

Don't forget to check the workshop schedule in this edition of the *Grassroots* and plan

to attend. These workshops are very informative. The more information you know about your role as a township officer makes it easier and more enjoyable for you.

Clerks or treasurers who are responsible for the Federal filings (1099s, W2s, W4s, etc.) should definitely be at this workshop because the forms and information you need to fill them out will be presented by IRS officials.

Be sure to bring your township manual as we have 55 new pages to update it. They are changes due to laws passed in the last legislative session or other updates.

Also don't forget our legal advisor Tom Moe will be present so it will be an excellent time to bring any problems, or ask questions that you need answers for.

Last of all, but not to forget, and for some of you the only reason you come, our cast of famous actors will present another thrilling episode of life in Normal Township, depicting changes in laws that occurred at the last legislative session.

I'm glad to see that some of you are using our website: ndtoa.com. Some have submitted questions. It is another way to contact us if you need information. Our website now contains our *Grassroots* newsletter which you can view and read online, and also download for printing. If you would like to receive the *Grassroots* this way please let us know and we will take your name off the mailing list thus saving your association printing cost and postage for mailing.

If you don't have a township manual and need information, it is also available on our website by clicking on the ND Century Code menu tab to the left of the screen. Remember **ndtoa.com** is a very useful tool.

Finally, you will notice an article in this newsletter offering accounting services for those townships who do not want to do the Federal forms. This service is provided by Barb Knutson, who is one of our board of directors. She realized that some township clerks were just going to quit if these forms were going to have to be filled out. This will give you an alternative. For a small annual fee Barb will do the paper work for you. All you need to do is provide her with the information which you already have.

Please be aware that this is **not** a service of NDTOA, but an independent venture by Barb to provide you with this service.

Looking forward to meeting you at the workshops. Hopefully the weather will cooperate and give us some nice days to come out and learn more about township government. See you there!

Secretary's Corner *Ken Yantes*

I remain concerned about testimony given at our resolutions meeting this year. It seems that some county tax assessors are not adhering to the North Dakota Century Codes prescribed procedures for tax assessment.

It is important to understand that our forefathers, at statehood times, proposed a three-tier tax equalization system.

This system begins at the city and township level, then the county level, and then to the state level. Each step is clearly spelled out in our NDCC and has been serving us exactly as was intended.

Out-of-state influence and procedures should be considered totally unlawful and treated as such.

Our keeper of the membership rolls has asked for some help. John Oxton has

faithfully prepared our membership list for many years so you can receive our newsletters when they are completed.

In order for John to find out who should be receiving one, he must contact the auditors of each county and request an updated list each year. It seems that not all township officers are filling out the Change of Office forms sent out by your county auditor.

Six counties have not sent John an updated list this year because they have not heard from all of their township officers yet. Please check to see if your township has sent your auditor an update this year and help John keep an accurate list of our members.

Thanks for keeping those forms updated.

Learn To Fill Out IRS Forms!

**IMPORTANT WORKSHOPS
ATTENTION OFFICERS,
TREASURERS, & CLERKS!**

AGENDA:

- President's Welcome
- Update of Township Manual
- NDTOA Skit
- Coffee Break
- TTT Presentation
- IRS Forms
- Mark Verke, NDIRF
Risk Management Report
- Tom Moe, Legal Questions & Answers Forum

FEBRUARY 9, 2004

Larimore: 1:00 p.m., Legion Club

Park River: 7:00 p.m., City Hall

FEBRUARY 10, 2004

Langdon: 9:00 a.m.

Cavalier County Courthouse
Community Room

Devils Lake: 7:00 p.m., KC Club

FEBRUARY 11, 2004

Newburg: 1:00 p.m.

Senior Citizens Building

Minot: 7:00 p.m.

Sleep Inn & Suites, Dakota Square

FEBRUARY 12, 2004

Williston: 1:00 p.m.

Airport International Inn

Stanley: 7:00 p.m.

Soil Conservation Office
Southside of Stanley

FEBRUARY 13, 2004

Turtle Lake: 9:00 a.m., Bev's Cafe

New Rockford: 2:00 p.m., Legion Club

FEBRUARY 17, 2004

Bowman: 9:00 a.m., City Hall

Mott: 2:00 p.m., KC Club

FEBRUARY 18, 2004

Steele: 9:00 a.m., Vets Club

Jamestown: 2:00 p.m., Gladstone Inn

Oakes: 7:00 p.m., Klien's Cafe

FEBRUARY 19, 2004

Lisbon: 1:00 p.m.

Steakout, 2 miles South

Casselton: 7:00 p.m.

Community Room

FEBRUARY 20, 2004

Finley: 9:00 a.m., Legion Hall

NOTE: In case of inclement weather, announcements will be broadcasted by KFYZ 550 and KFGO 790 radio stations.

IRS Form Filing Services Available

Services are available to townships that would like to have the necessary IRS forms filed for them.

Includes all annual forms required by the IRS.

Fees are as follows:

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Non-members — \$175.00 annually per township

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The Country Lawyer *Thomas R. Moe, Attorney-at-Law*



Greetings everyone!

March is soon upon us and that means annual meeting time. Now is a good time to review annual meeting procedures. See Section 58-04 in your township officers handbook. Clerks should review the minutes from last year's meeting just to refresh yourself. And, it's not too soon to begin recruiting if there will be a vacancy at the election!

Before the March annual meetings, however, your state association will once again be hosting the regional workshops in February which have been so successful in prior years. Quite a rigorous schedule has been set, with workshop sites located throughout the state. One should be able to easily attend a meeting at a location fairly close to home.

Remember, these workshops are for all township officers, so clerks, treasurers, and assessors are most welcome as well. I think clerks will especially find the workshops helpful as the folks from the IRS will be on hand to assist us in learning about the tax forms that we are required to complete.

A legislative update and information from the North Dakota Insurance Reserve Fund with Mark Verke will be on the agenda. Of most important note will be a new edition of updates for the handbook taken from actions of the 2003 Legislature. I'll round out the agenda with some thoughts on legal obligations for townships.

I heard through the grapevine that Mr. Iver Buford Askin (I.B. Askin) from Normal township will also be on hand!

The workshops are your state association's opportunity to meet with member townships. It fulfills our obligation stated in our by-laws to provide education and training for our members. And, it allows me to place a face with a telephone voice! Please make plans today to attend the workshop when it comes to your area.

I hope this finds all in good health. Keep warm and ponder the answer to this question: *Why is it that we drive on a parkway yet park on a driveway?*

Following are some questions received in the office. See you at the workshops!

Q. I see the IRS is trying to make us fill out some tax forms for the township. Do we have to do this? It seems like such a waste of time.

A. The law for withholding social security taxes has been on the books for many, many years. Townships have been lax in not following the federal law all these years. While there probably won't be a requirement to withhold income taxes on most officer's salary, there is a requirement to pay the social security or FICA tax on the very first dollar of compensation. The Supreme Court has said that elected officials are considered "employees" for tax purposes, so I'm afraid we're stuck! Remember, we're not alone—it's not just North Dakota townships that have to do this, but townships, small villages, park districts, and small political subdivisions all across the United States that must meet the requirement.

Q. What happens if we don't have an annual meeting? Nobody ever comes, and we're thinking that we'll just tell the auditor everything will be the same as last year.

A. The first thing that comes to mind is that you won't have an official budget, and any taxes you levy probably would be unconstitutional and could be challenged—especially by an out of state or absentee landowner. Who would be your officers? Interestingly, the County Commissioners can appoint township officers if no annual meeting is held. See Section 58-04-20. Remember, even if nobody comes to the meeting, it is their opportunity to attend that is important.

Q. Does the chairman of the supervisors have to chair the annual meeting? She will be late getting to the meeting and we weren't sure if someone else is authorized to do it.

A. No, the chairman does not have to chair the meeting. (Although I know that in most townships this is the normal practice.) In fact, neither the chairman nor the other supervisors have any special status on annual meeting day. The law is quite specific that the electors shall assemble and elect one from their number to be the moderator of the meeting. Most of the time that person is the chairman of the supervisors, but that is not required.

Q. Do we have to publish a notice in the paper about the annual meeting? We could just send out a postcard to everyone living here or, we could even e-mail everyone.

A. The law specifically calls for a newspaper notice. Until that law is changed, it is a requirement. I know many county township officers associations that put in one notice for all the townships in the county. That's an excellent idea and suffices to meet the legal requirements and is less expensive. I even saw one county association that lists all the townships in the county, the various meeting places and times for each township, and a note that if the township wasn't listed that it had failed to be a member of the county association! I like your idea of post cards to remind people of the meeting, but alone it is not sufficient notice under the present law. I also think your e-mail idea is a good one, and I suspect that in the not too distant future electronic notification may be allowed.

Q. We have a landowner that "cleaned" his road ditch and left a deep drop off. In addition, he plowed up the shoulder of the road. He's just a troublemaker—anything we can do?

A. Start documenting your case with some letters and correspondence. He'll just throw them away, but the point is to be able to prove that you have told him about the problem. Take some pictures and bring them to the States Attorney as it is a misdemeanor to damage a road. Take him to small claims court (with your pictures) and seek restitution for the damages. Fix the damage yourself, and put the costs and expenses against his taxes. A "friendly" discussion with all three supervisors present may also be in order. Many of these "troublemakers" are the way they are because we let them be that way.



*It isn't what you know that counts;
it's what you think of—in time.*

Annual Meeting, cont'd from page 1



Tom Moe led a discussion as to “What’s happening in your township?” Participation from many township members was excellent and many issues of legal concern were answered.



District 5 Director Barb Knutson presented interesting views on how to take meeting minutes and other record keeping requirements.

Representative Robin Weisz won the Legislator of the Year Award and was present to receive it. The Mr. Township Award was given to Helen Fritchie, a Benson County township officer. Past President Gene Gehrke served as



auctioneer for our 2nd Annual NDTOA Auction and \$472 was raised for special projects of the NDTOA.

Mark Verke, Risk Management Specialist for the NDIRF, spoke of his new slide show presentation and offered to bring it around to the meetings of our county associations when asked to do so. He also indicated that the conferment checks could be as much as 42% of premiums paid this year.

Steve Ginsbach, Vice President and Resolutions Committee Chairman, held a Resolutions Session which gave absolute direction to change the North Dakota Century Codes on pesticides used on roadsides.

The by-law change that removed the treasurer from the audit committee passed unanimously. State officers received a stipend increase of 50 percent.

The election process returned the following results: District #1 re-elected Director Floyd Miller; District #3 re-elected Larry Syverson and District #5 re-elected Barb Knutson. All accepted another two years as directors of your state association. President Don Malcomb and Vice President Steve Ginsbach were both unanimously re-elected for another two year term.

A motion to increase the dues to \$50 was passed but will have to be re-voted on next year as it did not meet the pre-meeting notification that our by-laws require.

Minnesota State President Loren Engebretson sang an appropriate closing song. President Don Malcomb then adjourned the meeting.

A special thanks to Mark Verke for taking great pictures at the annual meeting!



Pictured left to right are: Township officers District 3 Director Larry Syverson; Past President John Oxtan; Vice President Steve Ginsbach; State Treasurer Nolan Verwest; District 4 Director Kerry Schorsch; and District 2 Director Ralph Olson.

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Township Federal Employment Tax Responsibilities

Whether workers who provide services for government entities are employees or independent contractors is a question of great importance for the workers and those who pay them.

Generally, when workers are employees, the government entity that employs them must withhold and pay employment taxes. When a worker is an independent contractor, the government entity has information reporting responsibilities, but does not have to withhold and pay employment taxes.

Under Federal law, the common-law rule is used to determine whether a worker is an employee of the service recipient (i.e., a government entity).

If the government entity has the **right** to direct and control the worker as to the manner and means of the worker's job performance, the worker is an employee for Federal tax purposes.

The government entity does not have to actually direct or control the way the work is done—as long as it has the right to do so. While the government entity also has some, though less, control over an independent contractor, the difference between an employee and an independent contractor lies in the degree of control.

If an employee is classified as an independent contractor and no reasonable basis for having done so is found, the township may be held liable for employment taxes for that worker.

See IRS Publication 15-A, *Employer's Supplemental Tax Guide* and Publication 963, *Federal-State Reference Guide* for more detailed information on determining whether a worker is an employee or independent contractor. These publications can be ordered by calling 1-800-829-3676 or viewed/downloaded from the IRS web site at www.irs.gov.

A township may have elected and appointed officials as well as workers who are hired or contracted for their services.

Elected and most appointed officials are defined by Federal statute as employees of the public entities they serve, i.e. mayors, members of the legislature, county commissioners, city council members, and board or commission members.

A public official has authority to exercise the power of the government and does so as an agent and employee of the government. Thus, the Supreme Court has held that public officials are employees.

A public official performs a governmental duty exercised pursuant to a public law. A public office is a position created by law, holding a delegation of a portion of the

sovereign powers of government to be exercised for the benefit of the public.

State statutes always specify the duties of a public office and generally establish the officer's superiors and subordinates, if any. They establish an official's term of office, sometimes the compensation.

State statutes may also require that a public official take an oath of office, and they often establish general and specific penalties for dereliction of duty.

Elected officials are responsible to the public, which has the power not to reelect them. Elected officials may also be subject to recall.

As employees, mandatory social security and Medicare applies to elected and most appointed township officials, as well as to those employees hired by the township, unless they are covered under a Section 218 Agreement or are a qualified participant in a public retirement system.

A Section 218 Agreement is a voluntary agreement the township has (through the state) with the Social Security Administration to provide social security and/or Medicare coverage

to these employees.

For more information on Section 218 Agreements or whether to withhold social security and Medicare taxes if your township has a public retirements system, see IRS Publication 963 or contact IRS FSLG Specialists, Rhonda Kingsley at 701-239-5400, ext. 261 (e-mail rhonda.g.kingsley@irs.gov) or Allyn Klamann at 701-227-0133 (e-mail allyn.r.klamann@irs.gov).

The following list in the box below provides a brief summary of basic Federal employment tax responsibilities. If any date shown below falls on a Saturday, Sunday, or Federal holiday, use the next business day.

Because the individual circumstances for each township can vary greatly, their responsibilities for withholding, depositing, and reporting employment taxes can differ. Each item in this list is discussed in more detail in Publication 15, *Circular E, Employer's Tax Guide* and in Publication 963, *Federal-State Reference Guide*.

NEW EMPLOYEES (Elected and most appointed township officials as well as hired employees):

- Verify work eligibility of employees (Form I-9, *Employment Eligibility Verification*). Available from U.S. Citizenship and Immigration Services by calling 1-800-870-3676 or at www.uscis.gov.
- Record employee's name and SSN from social security card.
- Ask employee for Form W-4, *Employee's Withholding Allowance Certificate*
- Provide employee Form W-5, *Earned Income Credit Advance Payment Certificate* (if applicable).

EACH PAYDAY:

- Withhold Federal income tax based on each employee's Form W-4.
- Withhold employee's share of social security and Medicare taxes, as applicable.
- Include advance earned income credit payment in paycheck if employee requested it on Form W-5.
- Deposit Requirements: You may pay the income, social security, and Medicare taxes with Form 941 if your total tax liability for the quarter is less than \$2,500 and the taxes are paid in full with a timely filed return. If your total tax liability for the quarter is \$2,500 or more, see Publication 15, *Circular E* for deposit requirements.

QUARTERLY (By April 30, July 31, October 31, and January 31):

- File Form 941, *Employer's Quarterly Federal Tax Return*

ANNUALLY

Employees:

- Before *December 1* - Remind employees to submit a new Form W-4 if they need to change their withholding.
- Form W-5 expires on *December 31*. Eligible employees who want to receive advance payments of the earned income credit in the next year must give you a new Form W-5.
- Reconcile amounts on Forms 941 with Forms W-2 and W-3.
- By *January 31* - Furnish each employee Copies B, C, and 2 of Form W-2.
- By *February 15* - Ask for a new Form W-4 from employees claiming exemption from income tax withholding.
- File Copy A of Forms W-2 and the transmittal Form W-3 with the SSA by *February 28* if filing paper forms. By *February 28* with Form 6559 if filing by magnetic media. By *March 31* if filing electronically.

INDEPENDENT CONTRACTORS:

- By *January 31*: Furnish each recipient a Form 1099 (such as Form 1099-MISC). Form W-9 may be used to secure the vendor's Taxpayer Identification Number (SSN or EIN).
- By *January 31*: File Form 945 for any nonpayroll income tax withholding, such as backup withholding. See the Instructions for Form 945 for details on depositing nonpayroll income tax withholding.
- File Copy A of Forms 1099 with the transmittal Form 1096 with the IRS by *February 28* if filing paper forms. By *February 28* with Form 4804 if filing by magnetic media. By *March 31* if filing electronically.

REMINDER: IRS FORM 941 DUE APRIL 30, 2004

IRS Form 941, Employer's Quarterly Federal Tax Return, for the first quarter of 2004 is due April 30, 2004. The U.S. Supreme Court has held that public officials, such as elected and most appointed township officials, are employees of the public entity they serve. If compensation is paid to employees of the township, whether they are paid monthly, quarterly, or yearly, a Form 941 filing requirement is established. Compensation paid to elected and most appointed township officials, as well as other employees of the township, is subject to social security and Medicare taxes. See IRS Publication 463, Travel, Entertainment, Gift, and Car Expenses for treatment of reimbursed expenses.

If compensation is paid to these individuals during January, February, or March 2004, the Form 941 is completed showing the total compensation paid as well as the amount of Federal income tax withheld (as applicable), social security and Medicare taxes withheld. A tax liability for the quarter of less than \$2,500 may be paid with the Form 941, using the payment voucher Form 941-V, if the taxes are paid in full with a timely filed Form 941.

If no compensation is paid during the first quarter of 2004, but will be paid in a later quarter, the Form 941 for the first quarter of 2004 will be completed showing zeros on lines 2 through 15. The instructions for Form 941 contain additional information regarding this form.

Please contact IRS Federal, State and Local Government Specialists Allyn Klaman at 701-227-0133 (e-mail allyn.r.klaman@irs.gov) or Rhonda Kingsley at 701-239-5400, ext 261 (e-mail rhonda.g.kingsley@irs.gov) with questions regarding the Form 941 or any other township Federal employment tax responsibility.

It's in the planning stages! If you are interested in receiving this newsletter by e-mail, please contact Kerry Schorsch at Rt. 2 Box 15, New England, ND 58647 or (701) 579-4703 or e-mail kerry@globaladvertising.com.

Exercise. Eat Well. Stay Healthy. (We Can Wait.) —Slogan for a Canadian funeral home.

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