

N.D.A.G. Letter to Hagerty (Jan. 28, 1985)

January 28, 1985

Ms. Gail Hagerty
Burleigh County State's Attorney
Burleigh County Courthouse
514 East Thayer Avenue
Bismarck, North Dakota 58501

Dear Ms. Hagerty:

Thank you for your letter of January 14, 1985, regarding whether the County Emergency Fund, N.D.C.C. 57-15-28, may be used for construction of new court facilities and courtroom remodeling.

N.D.C.C. §57-15-28 provides that the governing body of any county may levy a tax for emergency purposes not exceeding the limitation of N.D.C.C. §57-15-06.7(22). Each county may create an emergency fund and all taxes levied for emergency purposes by any county, when collected, shall be deposited in the emergency fund. However, it is clear from the statute that there are only three situations in which a county emergency fund can be used. These situations include (1) the destruction or impairment of any county property necessary for the conduct of the affairs of the county, (2) emergency caused by nature, or (3) entry of a court order by a court of competent jurisdiction of a judgment for damages against the county.

The question as to whether the construction of new court facilities and courtroom remodeling fits under one of these three categories is a question of fact which we are not authorized to determine. Based on the facts that you have presented, however, it appears that only the first category listed above may be applicable.

Please find enclosed a copy of a 1974 Attorney General's Opinion to Mr. John O. Garaas and a 1976 letter to Mr. John M. Olson. Both of these documents deal with the use of emergency funds by a county for the purposes of remodeling jail facilities. I believe the information provided in these two documents will aid you in the resolution of this issue.

Sincerely,

Nicholas J. Spaeth

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Enclosure