

## **N.D.A.G. Letter to Stenehjem (March 6, 1987)**

March 6, 1987

Honorable Wayne Stenehjem  
State Senator  
District 42  
Senate Chambers State  
Capitol Bismarck, ND 58505

Dear Senator Stenehjem:

Thank you for your letter of January 3, 1987, pertaining to a city of Grand Forks ordinance which charges a service fee to the University of North Dakota for excess fire department calls.

Your first question is whether a home rule city may require a state institution, such as the University of North Dakota, to pay an assessment for fire calls within the city limits of that city. The powers of a home rule city are listed at N.D.C.C. § 40-05.1-06. In N.D.C.C. § 40-05.1-06(2), the following language appears, in part, as follows:

2. . . .to levy and collect taxes, excises, fees, charges, and special assessments for benefits conferred, for its public and proprietary functions, activities, operations, undertakings, and improvements;. . .  
.to establish charges for a city or other services. . . .

N.D.C.C. § 40-05.1-06(2) clearly authorizes a home rule city to levy assessments or establish charges for the provision of city services, including fire protection services.

It is important to note that City of Grand Forks Ordinance 12-1002 requires that a service fee will be charged for false or accidental alarms only when their frequency exceeds three alarms in any thirty day period. Although N.D. Const. Art. X, § 5 provides that state educational institutions such as the University of North Dakota are exempt from property taxation, this exemption does not shield a state educational institution from liability for city fire protection services which are provided over and above these services which are reasonable and customary.

Other city-imposed special assessments may be levied upon tax exempt city or state-owned property for services which improve the property's value or provide special benefits to that property. See Gallaher v. City of Fargo, 64 N.W.2d 444 (N.D. 1954) (special paving assessments levied upon tax exempt city property); C. A. Wagner Const. Co. v. City of Sioux Falls, 27 N.W.2d 916 (S.D. 1947) (a cemetery's statutory exemption from taxation does not include special assessments for local improvements). A special assessment for local improvements, like the service fee, may be imposed by a city when the city through additional services confers a special benefit upon property which is over

and above that conferred upon the community itself. Murphy v. City of Bismarck, 109 N.W.2d 635 (N.D. 1961); Fluckey v. City of Plymouth, 100 N.W.2d 486 (Mich. 1960).

An assessment for additional fire protection services, therefore, is not a tax upon the university's real holdings in order to generate city revenue but a service fee imposed upon the university for the costs of providing a specific service in addition to its traditional fire protection obligations. The city of Grand Forks conferred a specific fire protection benefit to the university in addition to its customary fire protection services. As a result, the city may properly impose a service charge to recover the additional costs of providing this service to the University.

Your second question is whether a state institution such as the University of North Dakota may properly pay such an assessment or charge without a specific legislative appropriation. Each biennium, the Legislature appropriates funds to the state's educational institutions. The control of these funds rests with the Board of Higher Education. N.D.C.C. § 15-10-16. N.D.C.C. § 15-10-16 stipulates only that "funds appropriated by the legislative assembly and specifically designed for any one or more of such institutions shall not be used for any other institutions." The North Dakota Supreme Court has interpreted the Board's control of these funds to mean that "[t]he board of Higher Education has the power of management and supervision of the institutions." Nord v. Guy, 141 N.W.2d 395 (N.D. 1966).

It is my opinion, therefore, that the Board of Higher Education is within its statutory management and supervisory authority to allow payment by the university for a city's service charge for excess fire calls without a specific legislative authority to do so, as long as this payment comes from funds specifically designated for the University of North Dakota.

Sincerely,

Nicholas J. Spaeth

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