

N.D.A.G. Letter to Mehrer (June 1, 1987)

June 1, 1987

Mr. Owen K. Mehrer
Stark County State's Attorney
P. O. Box 130
Dickinson ND 58601

Dear Mr. Mehrer:

Thank you for your letter of April 8, 1987, regarding the definition of the term "board of county commissioners," and the issue of which officers vote on the annual budget for the district board of health.

N.D.C.C. § 23-14-03 defines the term "board of county commissioners:"

23-14-03. ORGANIZED BY WHAT OFFICERS. Upon the adoption of the plan by a single county, or by two or more contiguous counties, as provided in section 23-14-01, the board of county commissioners of the county or counties concerned shall proceed to organize such district health unit by the appointment of a district board of health as hereinafter provided, and in all cases where two or more counties constitute one health district, the term board of county commissioner shall be taken to mean the boards of county commissioners of the several counties concerned acting together in joint session unless the context requires a differing meaning. The original meeting for the appointment of the district board of health, as well as all other meetings held for the purpose of filling vacancies on said board, shall be held at the county seat of the county having the larger population, upon notice given to the boards of county commissioners by the state health officer. (Emphasis supplied.)

Each of the counties in the health district is a participating member of the district. Therefore, the power to approve of the budget rests with a majority of the counties in the district.

Each of the county commissioners has the authority to vote on the proposed health district budget. However, each commissioner's vote can only be counted in that commissioner's county's approval of the budget. The authority to approve the actual budget rests with the majority of the counties in the health district.

N.D.C.C. § 23-14-11 specifies the authority of the joint board of county commissioners to approve board of health budgets.

23-14-11. HEALTH FUND - HOW PROVIDED. All salaries, mileage,

compensation, and expenses provided for herein shall be paid as the salaries, mileage, compensation, and expenses of other county officers now are paid, out of the health district fund as follows:

1. The district board of health, as provided in this chapter, shall prepare a budget for the next fiscal year at the time at which and in the manner in which a county budget is adopted and shall submit that budget to the board of county commissioners for approval. The amount budgeted and approved shall be prorated, in health districts composed of more than one county, among the various counties in the health districts according to the assessed valuation of the respective counties comprising the health district, and shall, within ten days after approval by the board of county commissioners, be certified by the district health board to the respective county auditors of such counties, and shall be included in the levies of such counties. The amount called for in the budget shall not exceed the amount which can be raised by a levy of two and one-half mills on the taxable valuation, subject to public hearing in each county comprising the district at least fifteen days prior to action taken by the joint boards of county commissioners. Action taken by the joint boards of county commissioners shall be based on the record including comments received at the public hearing. Such levy shall not be subject to the limitation on the county tax levy for general and special county purposes, and the amount derived therefrom shall be placed in a special health fund. The health fund shall be deposited with and disbursed by the treasurer of the district board of health, and all counties comprising the health district shall remit and make settlements with such treasurer quarterly. Any funds remaining at the end of any fiscal year may be carried over to the next fiscal year.

(Emphasis supplied.)

The members of the district board of health do not have a vote on the final approval of the annual budget, although traditionally and by statute, they have been involved with the preparation of that budget. The district board of health does certify the approved annual budget to the respective county auditors of the participating counties. The authority to approve the actual budget rests with the joint board of county commissioners.

I have enclosed a copy of Attorney General's Opinion 86-29 which discusses issues similar to those raised in your letter.

Sincerely,

Nicholas J. Spaeth

vkk