

Date Issued: June 18, 1981 (AGO 81-65)

Requested by: A. S. Benson,
Bottineau County State's Attorney

- QUESTIONS PRESENTED -

I.

Whether townships in a rural ambulance service district supported by a two-mill tax levy pursuant to chapter 11-28.3 of the North Dakota Century Code may withdraw from such district, consolidate with a volunteer ambulance service in an adjoining county and continue to receive the two-mill tax levy on the property within their townships.

II.

Whether the townships referred to in Question I can, if they remain in the rural ambulance service district, use all or part of the two-mill levy on the property in those townships under a contract agreement with the county rural ambulance service district and the volunteer ambulance service in the adjoining county to provide ambulance service to the five townships and the volunteer ambulance service area in the adjoining county.

III.

Whether there are any available guidelines as to the percentage of the total mill levy in a countywide rural ambulance service district that may be used for funding administrative expenses.

IV.

Whether a rural ambulance service district may expend money for payment of expenses of members of the district's board of directors in attending related conventions and continuing education programs.

- ATTORNEY GENERAL'S OPINION -

I.

It is my opinion that upon following the procedure for withdrawal as provided in section 11-28.3-13, N.D.C.C., townships in a rural ambulance service district may withdraw from the district, but upon lawful withdrawal from the district, the taxable property in the withdrawn townships would not be subject to the district's tax levies made after the withdrawal and could not then be taxed for rural ambulance service unless the withdrawn area was lawfully organized into its own rural ambulance service district or became a part of another rural ambulance service district.

II.

It is my further opinion that while individual townships remain a part of a larger rural ambulance service district, they may not separately contract with the district nor a volunteer ambulance service in an adjoining county.

III.

It is my further opinion that there are no guidelines that establish the percentage of the total mill levy in a countywide rural ambulance service district that may be used for administrative expense of the district.

IV.

It is my further opinion that it is not proper for a rural ambulance service district to expend money for payment of expenses for attendance of members of the district's board of directors at conventions and continuing education programs unless that attendance is necessary to fully carry out the purposes of the rural ambulance service district law.

- ANALYSIS -

I.

Chapter 11-28.3, N.D.C.C., provides a procedure in section 11-28.3-13 for changing the boundaries of a rural ambulance service district. Because that section speaks in terms of changing or altering the existing boundaries of the district (as well as dissolving a district), it seems clear that the size of a district can either be increased or diminished by following the prescribed procedure, provided sixty percent of the voters voting on the question approve the proposed change in the district's boundaries.

If a part of a rural ambulance service district does withdraw from the district as provided in section 11-28.3-13, N.D.C.C., the taxable property in the withdrawn area would no longer be subject to the property tax mill levy of the district from which it withdrew. The withdrawn area could not, however, levy a property tax to pay for ambulance services unless it was then organized into a separate rural ambulance service district pursuant to sections 11-28.3-01 through 11-28.3-06, N.D.C.C., or became part of another rural ambulance service district as provided in section 11-28.3-13, N.D.C.C. A rural ambulance service district is a separate and distinct political subdivision with power to levy a property tax on property within its jurisdiction as provided in sections 11-28.3-03, 11-28.3-04 and 11-28.3-09, N.D.C.C. The only other authority for levying a property tax for providing ambulance services in rural areas is that given to a board of county commissioners of a county as provided in sections 57-15-50 and 57-15-51, N.D.C.C., if authorized by a majority of the voters of the county at a regular or special countywide election.

II.

Chapter 11-28.3, N.D.C.C., does not provide any authority for a particular part of a rural ambulance service district to separately contract for ambulance service to be provided to that part of the district. The board of directors of the district does, however, have power under subsections 1 and 5 of Section 11-28.3-08, N.D.C.C., to develop a general ambulance service program for the district and to make and execute contracts in the name of and on behalf of the district with regard to that program.

It appears that if the board of directors of the district wished to develop a program that provided for ambulance service for a particular part of the district that would be furnished from a different source than that furnished to the rest of the district, it would have the authority under section 11-28.3-08 to do so, including contracting with another rural ambulance service district as authorized by section 11-28.3-12, N.D.C.C.

III.

There is no provision in chapter 11-28.3, N.D.C.C., for any person or group to develop an official guideline indicating an acceptable percentage of the total tax levy in a countywide rural ambulance service district that may be used for administrative expense of the district. While there may be some general understanding of the scope of the term "administrative expense," any guideline relative to that term would presumably include a definition of it.

IV.

Money received from taxes levied by a rural ambulance service district and from other sources can be expended only by authority of its board of directors as provided in sections 11-28.3-09 and 11-28.3-09 and 11-28.3-11, N.D.C.C. That authority to expend money is derived from the powers of the board of directors set out in chapter 11-28.3, N.D.C.C., particularly in section 11-28.3-08, N.D.C.C. None of those powers specifically authorize expenditures to be made for covering expenses of the district's directors at conventions, schools, etc. Subsection 4 of that section, however, does empower the board of directors to manage and conduct the business affairs of the district and subsection 9 empowers the board to generally perform all acts necessary to fully carry out the purposes of chapter 11-28.3, N.D.C.C.

Our Supreme Court holds that political subdivisions have only the powers expressly given to them by the Legislature or that are necessarily implied from the powers expressly given to them. Murphy v. Swanson, 198 N.W. 116 (N.D. 1924); Murphy v. City of Bismarck, 109 N.W.2d. 635 (N.D. 1961). As to reimbursement for expenses, the following is stated in 67 C.J.S. 720, Officers, Section 225:

The right of an officer to compensation for expenses incurred by him in the performance of an official duty must be found in a provision of the constitution or a statute conferring it either directly or by necessary implication, and the officer cannot recover compensation additional to the compensation fixed by statute for such expenses.

Unless attendance by members of the board of directors at a convention or a school is, as provided in subsection 9 of section 11-28.3-08, N.D.C.C., necessary to fully carry out the purposes of chapter 11-28.3, N.D.C.C., it does not appear that board members can be reimbursed for expenses incurred by them in attending a convention or a school or other meeting unless they are required by some provision of law to attend. In this regard it is noted that the last sentence of section 11-28.3-06, N.D.C.C., provides that all officers and directors shall serve without pay, thus seeming to indicate that the Legislature intended to minimize expenses of the district as much as reasonably possible.

- EFFECT -

This opinion is issued pursuant to section 54-12-01, N.D.C.C. It governs the action of public officials until such time as the questions presented are decided by the courts.

ROBERT O. WEFALD
Attorney General

Prepared by: Kenneth M. Jakes
Assistant Attorney General