

STATE OF NORTH DAKOTA
ATTORNEY GENERAL'S OPINION 94-F-11

Date issued: March 31, 1994

Requested by: Ted D. Seibel, Wells County State's
Attorney

- QUESTION PRESENTED -

Whether a rural fire protection district organized under N.D.C.C. ch. 18-11 has a duty to provide protection for a different fire protection district or for an area where a fire protection district does not exist.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that a rural fire protection district organized under N.D.C.C. ch. 18-11 does not have a duty to provide protection for a different fire protection district or for an area where a fire protection district does not exist absent a contract establishing such a duty.

- ANALYSIS -

The gist of an action in tort is the breach of a duty imposed by law. St. Paul Fire & Marine v. Amerada Hess Corp., 275 N.W.2d 304, 307 (N.D. 1979). Either a legal right or a duty imposed by law in favor of the injured party must have been breached to constitute a tort. Clairmont v. State Bank of Burleigh Cty. Trust, 295 N.W.2d 154, 158 (N.D. 1980). "Conduct, even though improper, does not always constitute a tort unless a legal right, as distinguished from a moral right, was violated or a duty was disregarded." Id.

As a general rule, the fact that an individual or entity realizes that action on its part is necessary for another's aid or protection does not of itself impose upon the individual or entity a duty to take such action. See Patch v. Sebelius, 349 N.W.2d 637, 642 (N.D. 1984) (quoting Restatement (Second) of Torts § 314 (1965)). Thus, unless chapter 18-10 creates a duty upon a rural fire protection district to

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protect other districts or areas where there is no fire protection district, a fire protection district has no duty to provide services for areas outside its district.

A review of chapter 18-10 demonstrates that the Legislature only intended a rural fire protection district's services to extend within the district area. N.D.C.C. ? 18-10-01 provides that a petition to establish a fire protection district must include a complete description of the boundaries of the rural property intended to be embraced in the proposed rural fire protection district. When discussing the powers of the board of directors, section 18-10-06 states that one of the powers of the board is "[t]o determine upon a general fire protection program for the district." N.D.C.C. ? 18-10-06(1) (emphasis added). "The board of directors shall determine a general fire protection policy for the district" N.D.C.C. ? 18-10-07 (emphasis added). Also, the board of directors "may purchase or lease such firefighting equipment, ambulances, or other emergency vehicles, supplies, and other real or personal property as is necessary and proper to carry out the general fire protection program of the district." N.D.C.C. ? 18-10-06(6) (emphasis added). Further, the board of directors is to "organize, establish, equip, maintain, and supervise a fire department or company to serve the district." N.D.C.C. ? 18-10-06(8) (emphasis added). All the above sections relate to providing services to the district. The only section in chapter 18-10 that addresses providing services to other districts or areas outside of a fire protection district is section 18-10-10. N.D.C.C. ? 18-10-10 provides for a contract between a fire protection district and another rural fire protection district or government agency. Thus, N.D.C.C. ch. 18-10 does not place a duty upon a rural fire protection district to fight fires or provide services outside the district limits absent a specific contract with another rural fire protection district or government agency establishing such a duty.

Chapter 18-10 indicates that the only property that should be protected by a rural fire protection district is property subject to the mill levy. N.D.C.C. ? 18-10-07. Section 18-10-11 provides procedures whereby a territory adjacent to the boundary of an existing rural fire protection district may be annexed to the district, and section 18-10-12.1 provides procedures whereby property may withdraw from the fire

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protection district and thereby avoid the mill levy. These sections lead to the conclusion that the Legislature intended those who receive the services of a rural fire protection district to pay for the services through the mill levy. Territories outside of the district do not pay for the services and therefore do not receive the benefit of the services. If any territory adjacent to the rural fire protection district desires the services it can seek to be annexed pursuant to section 18-10-11 or, if applicable, pursue a contract with the rural fire protection district pursuant to section 18-10-10.

In conclusion, it is therefore my opinion that a rural fire protection district organized under N.D.C.C. ch. 18-11 does not have a duty to provide protection for a different fire protection district or for an area where a fire protection district does not exist absent a contract establishing such a duty. Neither a threat of serious personal injury or death nor the fire resulting from an automobile accident changes the duty of the rural fire protection district.

- EFFECT -

This opinion is issued pursuant to N.D.C.C. ? 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.

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