

**LETTER OPINION
2001-L-43**

October 18, 2001

Honorable Ken Solberg
State Senator
207 Sunset Lane
Rugby, ND 58368-2510

Dear Senator Solberg:

Thank you for your letter asking about a county's expenditure of insurance proceeds obtained due to the loss of a building by fire. I understand from your letter that a county-owned building was destroyed by fire, and that the North Dakota Fire and Tornado Fund has adjusted the loss and paid the county for the building and its contents pursuant to N.D.C.C. ch. 26.1-22. You state the board of county commissioners appointed a "citizens committee" to oversee fundraising for the reconstruction of the building in question.

Your first question is whether your board of county commissioners may turn over the insurance proceeds it received from the Fire and Tornado Fund to the citizens committee for its use in rebuilding the structure. You compare the scenario to payments a county makes to "county fair boards, ambulance boards, museum boards etc.".

Public officials, including a board of county commissioners, have the "authority as is expressly given them by the constitution and statutes together with those powers and duties which are necessarily implied from the express grant of authority." American Federation of State, County, and Municipal Employees v. Olson, 338 N.W.2d 97, 100 (N.D. 1983). No statute provides for the appointment of a citizens committee under the circumstances you relate, and there is no necessary implication that such authority is available to a county for the purpose of conducting public business and the expenditure of public funds. From your letter, it appears the citizens committee is an unofficial group of interested private citizens. North Dakota's Constitution provides, in part:

[N]either the state nor any political subdivision thereof shall otherwise loan or give its credit or make donations to or in aid of any individual, association or corporation except for reasonable support of the poor

N.D. Const. art. X, § 18. Because of the absence of statutory authority for appointment of a citizens committee to take control of and expend the public funds of a county to rebuild a destroyed county building, there is no industry, business, or enterprise applicable, and bestowing public funds on such an unofficial group would be in violation of the above-noted section of the Constitution. See Letter from Attorney General Allen Olson to Raymond Rund (July 18, 1974) (county lacked authority to disburse public funds to citizens committee for bicentennial activities).

The comparisons you make to other payments from the county are inapposite because the other functions and payments are provided for by law. See N.D.C.C. § 4-02-26 (county fair boards); N.D.C.C. § 11-11-53 (county historical societies); and N.D.C.C. § 57-15-50 (county subsidy for emergency medical services).

It is therefore my opinion a board of county commissioners is not authorized to turn over public funds to a private citizens committee so that committee may conduct public business and expend public funds for the rebuilding of a public building. This being said, there is nothing in the code prohibiting the county commission from seeking advice from a citizens committee regarding the reconstruction of the building. Furthermore, the citizens committee may conduct private fundraising to help finance the project. It is, however, the statutory duty of the county commission to vote on the expenditure of any public funds, the final design of the building, and any other relevant issues.

Your second question is whether construction of the building in question qualifies for the use of county emergency funds. Your letter states the building in question is a "landmark" building on the county fairgrounds.

Section 57-15-28, N.D.C.C., authorizes counties to levy a tax for an emergency fund that "must be used only for emergency purposes caused by the destruction or impairment of any county property necessary for the conduct of the affairs of the county, emergencies caused by nature or by the entry by a court of competent jurisdiction of a judgment for damages against the county."

The intent of the Legislature must be sought initially from the language of a statute. County of Stutsman v. State Historical Society, 371 N.W.2d 321, 325 (N.D. 1985). If the Legislature does not define words used in a statute, the words are to be given their plain, ordinary, and commonly understood meanings. Kim-Go v. J. P. Furlong Enterprises, Inc., 460 N.W.2d 694, 696 (N.D. 1990); N.D.C.C. §§ 1-02-02, 1-02-03. For purposes of the emergency fund statute, the Legislature did not define either "emergency" or "necessary." "Emergency" means an "unexpected situation or sudden occurrence of a serious and urgent nature that demands immediate action." The American Heritage Dictionary 448 (2d

coll. ed. 1991). "Necessary" means "[a]bsolutely essential; indispensable." The American Heritage Dictionary 834 (2d coll. ed. 1991). Determining whether an emergency exists and whether the property is necessary for the conduct of the affairs of a county are questions of fact that must be made by the board in question.¹

It is therefore my opinion that funds available to a county pursuant to N.D.C.C. § 57-15-28 may not be used to rebuild the building in question unless the board of county commissioners determines that the loss of the building in question produced an occurrence of an urgent nature that demands immediate action and that the building in question is indispensable for the conduct of the affairs of the county.

Sincerely,

Wayne Stenehjem
Attorney General

rel/pg

¹ See 1995 N.D. Op. Att'y Gen. L-249. (Your letter does not indicate that emergencies caused by nature or by court judgments would be relevant to the issue at hand.)