

**LETTER OPINION
2002-L-48**

August 9, 2002

Mr. Wade Enget
New Town City Attorney
PO Box 369
Stanley, ND 58784

Dear Mr. Enget:

Thank you for your letter asking whether New Town can impose, on its residents who are members of the Three Affiliated Tribes, a \$2.00 public safety assessment, a \$1.00 civil defense assessment, and a \$2.00 street lights assessment. These three assessments are itemized on the monthly "water, sewer, and garbage" statement the city sends to each resident.

Your letter refers to a prior opinion from this office on a similar subject. Letter from Attorney General Heidi Heitkamp to Mary K. O'Donnell (Aug. 25, 1994). The 1994 opinion concluded that the county could not impose, on tribal members within the Turtle Mountain Indian Reservation, an excise tax on the use of telephone access lines to support an emergency communications system. It noted the general rule that tribal members within their reservations are generally exempt from the taxing authority of state and local governments.

Central to the 1994 opinion was the difference between a "tax" and a "fee." See also United States ex rel. Cheyenne River Sioux Tribe v. South Dakota, 105 F.3d 1552, 1557-58 (8th Cir. 1997) (enforceability of the assessment turned on whether it was a sales tax or a property tax). As discussed in the prior opinion, a "tax" is an enforced contribution for maintaining governmental functions, while a "fee" is a charge for a requested service. The law defining "tax" and "fee" has not changed since that opinion.

Because the three assessments you ask about are imposed on all residents for maintaining governmental functions, and are in no way dependent on their consent, they are taxes, not fees. And since Congress has not allowed these kinds of taxes to be imposed on members of the Three Affiliated Tribes within their reservation, New Town's effort to impose these taxes on tribal members is unlawful. See Montana v.

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Blackfeet Tribe of Indians, 471 U.S. 759, 764 (1985) ("Indian tribes and individuals generally are exempt from state taxation within their own territory"); Conf. W. Attorneys General, American Indian Law Deskbook 125, 314 (2d. ed. 1993).

I note that Congress has subjected Indian-owned property, even that within a reservation, to local property taxes. Cass County v. Leech Lake Band of Chippewa Indians, 524 U.S. 103 (1998). But, as described above, the three New Town taxes in question are not part of a property tax and cannot be validated under this limited exception to the general rule prohibiting on-reservation taxation of tribal members.

Sincerely,

Wayne Stenehjem
Attorney General

cmc/vkk