

LETTER OPINION
2006-L-32

September 21, 2006

Mr. Swain Benson, Sr.
Bottineau County State's Attorney
616 Main Street
Bottineau, ND 58318-1309

Dear Mr. Benson:

Thank you for your letter asking whether the Bottineau County Ambulance Service may use tax levy monies¹ to reimburse other ambulance services dispatched within the borders of the Bottineau County Ambulance Service District under N.D.C.C. § 57-40.6-10(1)(k). For the reasons stated below, it is my opinion that the Bottineau County Ambulance Service has the implied authority to use tax levy monies to reimburse other ambulance services dispatched within the borders of the Bottineau County Ambulance Service District under N.D.C.C. § 57-40.6-10(1)(k).

ANALYSIS

In your letter you refer to N.D.A.G. 2002-L-27 in which I construed the requirement contained in N.D.C.C. § 57-40.6-10(1)(k) that local governing bodies "ensure that the closest available emergency medical service is dispatched to the scene of medical emergencies regardless of city, county, or district boundaries." In that opinion I noted that "closest" generally means nearest in time or space and that an emergency telephone system dispatcher is in the best position to determine which emergency medical service is closest, but that closeness in time is generally more important because response time is critical when a medical emergency occurs.²

¹ Your letter does not specify whether the tax monies you allude to were levied under N.D.C.C. § 57-15-50 or under N.D.C.C. ch. 11-28.3. If the tax is levied under N.D.C.C. § 57-15-50, the county ambulance service would be an agent of the county under N.D.C.C. § 23-12-08 rather than an independent rural ambulance service district under N.D.C.C. ch. 11-28.3. See N.D.A.G. 95-L-186. However, because I have concluded that either a county or an ambulance service district has the implied authority to use tax money to reimburse another service provider dispatched into the county or district area, it does not matter in this instance whether the tax money was levied under N.D.C.C. § 57-15-50 or N.D.C.C. ch. 11-28.3.

² N.D.A.G. 2002-L-27.

As a consequence of the interpretation of N.D.C.C. § 57-40.6-10(1)(k) contained in N.D.A.G. 2002-L-27, circumstances might arise where another ambulance service could be dispatched within the borders of another county's ambulance service district because the other ambulance service is closest in time. You ask whether, in that situation, tax levy monies could be used to pay the other ambulance service.

Taxes may be levied for ambulance services in rural areas either through N.D.C.C. § 57-15-50 or N.D.C.C. ch. 11-28.3.³ Section 57-15-50, N.D.C.C., provides that upon petition of 10% of the qualified electors of the county or on its own motion, "the board of county commissioners of each county shall levy annually a tax not exceeding the limitation in subsection 23 of section 57-15-06.7, for the purpose of subsidizing county emergency medical services; provided, that this tax must be approved by a majority of the qualified electors of the county voting on the question" Chapter 11-28.3, N.D.C.C., provides for the creation of a rural ambulance service district and the levying of a tax to pay for those services.⁴ Section 11-28.3-09, N.D.C.C., provides that "[t]he auditor or auditors shall levy a tax not to exceed five mills upon the taxable property within the district for the maintenance of the ambulance service district for the fiscal year as provided by law." Both county⁵ and rural ambulance service districts⁶ have broad authority to contract for ambulance or other emergency services.

In addition, both county⁷ and rural ambulance service districts⁸ are separate and distinct political subdivisions. "A political subdivision possesses only those powers expressly granted to it by the Legislature or those necessarily implied from the powers expressly granted. Ebach v. Ralston, 469 N.W.2d 801, 804 (N.D. 1991) (cities); Murphy v. Swanson, 198 N.W. 116, 119 (N.D. 1924) (counties). See generally N.D. Const. art. VII, § 2."⁹

³ See N.D.A.G. 81-65.

⁴ See N.D.C.C. §§ 11-28.3-03 and 11-28.3-04.

⁵ Section 23-12-08, N.D.C.C., provides, in part, that any county "may, acting through its governing body, establish, maintain, contract for, or otherwise provide emergency medical service for such county"

⁶ Section 11-28.3-12, N.D.C.C., provides that "[a]ny rural ambulance service district may enter into a contract with another rural ambulance service district to consolidate or cooperate for mutual ambulance services or emergency vehicle services, or may enter into a contract with any federal, state, or local government agency for ambulance services or emergency vehicle services, upon terms suitable to all concerned."

⁷ See N.D.C.C. § 11-10-01; N.D.A.G. 2002-F-03.

⁸ N.D.A.G. 81-65.

⁹ N.D.A.G. 2002-F-03.

Because both county and rural ambulance service districts have the authority to levy a tax for ambulance and other emergency services and because both have the broad power to contract for those purposes, it is my opinion that either political subdivision has the necessarily implied authority to utilize any such tax monies to reimburse other ambulance service providers with which they may contract¹⁰ to provide emergency ambulance services within their jurisdiction as may be required under N.D.C.C. § 57-40.6-10(1)(k) and N.D.A.G. 2002-L-27.¹¹

Sincerely,

Wayne Stenehjem
Attorney General

jjf/pg

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.¹²

¹⁰ Under N.D.C.C. § 9-06-01, a contract may either be express or implied; an express contract is one in which terms are stated in words, while an implied contract is one the existence and terms of which are manifested by conduct; N.D.C.C. § 9-06-02 provides that contracts may be oral unless otherwise required by law to be in writing; and N.D.C.C. § 9-07-01 provides that all contracts, whether public or private, are to be interpreted by the same rules unless otherwise required by law.

¹¹ See also N.D.A.G. Letter to Graham (Dec. 30, 1974) ("We note that Section 57-15-50 of the North Dakota Century Code does provide that the tax shall be 'for the purpose of subsidizing county ambulance services.' On such basis, we would conclude that same could be paid pursuant to contract to any organization furnishing 'county ambulance service' for such services.").

¹² See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).