

**LETTER OPINION  
2004-L-30**

April 26, 2004

The Honorable Todd Porter  
House of Representatives  
704 Sixth Ave. NE  
Mandan, ND 58554-3422

Dear Representative Porter:

Thank you for your request for my opinion on whether an “emergency services communication system” under N.D.C.C. ch. 57-40.6 would include “landline data networks, wireless data networks, records management systems, and/or other peripheral technologies that do not directly involve the basic mission of response to 911 emergencies.”

While I cannot make the factual determination that a particular technology, system or network will, in fact, further the enhanced 911 (E911) effort, it is my opinion that governing bodies may authorize the expenditure of E911 funds in a manner that enhances and improves the E911 system, including the time for response. In considering a particular expenditure, governing bodies should make a specific finding, on the record, that the expenditure fits within the N.D.C.C. ch. 57-40.6 limits.

ANALYSIS

Chapter 57-40.6 allows counties and cities to impose a fee of up to “one dollar per month per telephone access line and per wireless access line” to fund an emergency services communication system. N.D.C.C. § 57-40.6-02(1). Subsection 2 of N.D.C.C. § 57-40.6-01 defines an “emergency services communication system” to mean “a statewide, countywide, or citywide radio system, land lines communication network, wireless service network, or enhanced 911 (E911) telephone system, which provides rapid public access for coordinated dispatching of services, personnel, equipment, and facilities for law enforcement, fire, medical, or other emergency services.” Section 57-40.6-05, N.D.C.C., restricts the use of the fee to certain purposes, including reimbursement to wireless service providers for construction necessary to provide wireless E911 service and to pay for implementing, maintaining and operating the emergency services communication system.

Section 57-40.6-10, N.D.C.C., provides several requirements for E911 systems. Among those listed is the requirement that an E911 system must “ensure that the closest available emergency medical service is dispatched to the scene of medical emergencies regardless

of city, county, or district boundaries.” N.D.C.C. § 57-40.6-10(1)(k). As long as proposed expenditures comply with the spending restrictions of N.D.C.C. § 57-40.6-05 and further the system requirements of N.D.C.C. § 57-40.6-10, I would anticipate the expenditures would be permissible.

In your letter, you indicate that the technologies you were interested in “are peripheral to the basic operational mission in public safety but these technologies serve to improve overall service delivery.” You also indicated that some of those technologies would help “provide for closest unit routing for emergencies.” While this office cannot resolve factual issues, if the facts and circumstances as presented are accurate, it appears the technologies you question would further the system requirements of N.D.C.C. § 57-40.6-10 and would, therefore, be permissible. Just because the improved technologies may also incidentally aid non-emergency dispatching does not necessarily mean the purchase of such technologies with E911 funds is not permissible.

Other states’ Attorneys General have examined various uses of funds similar to those used in North Dakota for E911 services. The Mississippi Attorney General opined the following:

[I]t is the opinion of this office that E-911 monies could be expended to purchase equipment for the E-911 system so long as the proposed use of the equipment was within the intended purpose of the E-911 statutory provisions found in Mississippi Code Annotated Sections 19-5-301 et seq., that of shortening the response time between a citizen's call for assistance and the response of the proper officials. Pursuant to Section 19-5-303(f), such equipment would include that which is necessary for the answering, transferring and dispatching of public emergency telephone calls originated by persons within the serving area who dial 911. The E-911 commissioners must make a determination, consistent with fact, and spread on the minutes, that the use of the radios by the Mississippi State Highway Patrol officers will be for E-911 purposes within the Jackson County area. This office cannot determine facts and cannot rule on the purchase of particular pieces of equipment.

Miss. Att’y Gen. Op. 2001-0283. The Alabama Attorney General similarly opined that expenditures of E911 funds in a manner that enhances and improves the E911 system, including the time for response, are permissible. Ala. Op. Att’y General to Jerry L. Batts, Ala. AG No. 91-00343

I agree with those opinions. Thus, while I cannot make the factual determination that a particular technology, system or network will, in fact, further the E911 effort, it is my opinion that governing bodies may authorize the expenditure of E911 funds in a manner that enhances and improves the E911 system, including the time for response. In

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considering a particular expenditure, governing bodies should make a specific finding, on the record, that the expenditure fits within a certain parameter of N.D.C.C. ch. 57-40.6.

Sincerely,

Wayne Stenehjem  
Attorney General

sam/vkk

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