

**LETTER OPINION
2009-L-09**

July 1, 2009

Mr. Howard D. Swanson
Grand Forks City Attorney
PO Box 12909
Grand Forks, ND 58208-2909

Dear Mr. Swanson:

Thank you for requesting my opinion on whether the proceeds from a 911 fee may be used to acquire, construct, or lease space to operate an emergency services communication system. It is my opinion that the proceeds from a 911 fee may be used to acquire, construct, or lease space to implement and operate an emergency services communication system.

ANALYSIS

The governing body of a city or county may impose a fee on all assessed communications services upon approval of the electors.¹ The governing body may use the proceeds of the fee “solely for implementing, maintaining, or operating the emergency services communication system”² “Emergency services communication system” means “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.”³

The legislative history regarding this 911 fee is not helpful in responding to your question. Also, there are no North Dakota court cases or Attorney General opinions directly addressing your question.

¹ See N.D.C.C. § 57-40.6-02.

² N.D.C.C. § 57-40.6-05 (emphasis added).

³ N.D.C.C. § 57-40.6-01(5).

Political subdivisions such as cities and counties possess only those powers expressly granted to them by the Legislature or those necessarily implied from the powers expressly granted.⁴ Because the 911 fee statute does not expressly say the fee may be used to acquire, construct, or lease space, the question arises as to whether those powers are necessarily implied from express powers given to cities and counties to “implement” and “operate” the emergency services communication system.⁵

“Words used in any statute are to be understood in their ordinary sense, unless a contrary intention plainly appears, but any words explained in this [North Dakota Century] code are to be understood as thus explained.”⁶ The words “implement” and “operate” are not defined in N.D.C.C. ch. 57-40.6. A dictionary defines “implement” to include: “[t]o put into practical effect; carry out”⁷ A dictionary defines “operate” to include: “[t]o run or control the functioning of [t]o conduct the affairs of; manage”⁸ A city or county would not be able to put into practical effect, or to run or control the emergency services communication system, or to conduct the affairs of, or manage, the emergency services communication system, unless it had a site from which to operate. Consequently, I believe that the power to acquire, construct, or lease space for an emergency services communication system is necessarily implied from the express powers granted to cities and counties to implement and operate such a system. Also, nothing in N.D.C.C. ch. 57-40.6 suggests the legislature intended that the ordinary understanding of the meanings of “implement” or “operate” should not apply. Thus, it is my opinion that the proceeds from a 911 fee may be used to acquire, construct, or lease space to implement and operate an emergency services communication system.⁹

This conclusion is consistent with the guidelines of the “emergency services communications coordinating committee,”¹⁰ which “shall . . . [d]evelop guidelines regarding the allowable uses of the fee revenue collected”¹¹ The emergency services

⁴ See N.D.A.G. 2002-F-03 (citing Ebach v. Ralston, 469 N.W.2d 801, 804 (N.D. 1991) and Murphy v. Swanson, 198 N.W. 116, 119 (N.D. 1924).

⁵ See N.D.C.C. § 57-40.6-05.

⁶ N.D.C.C. § 1-02-02.

⁷ The American Heritage Dictionary 646 (2d coll. ed. 1991).

⁸ The American Heritage Dictionary 871 (2d coll. ed. 1991).

⁹ This conclusion is consistent with a previous Attorney General’s opinion concluding that proceeds of the fee may be used “in a manner that enhances and improves the E911 system.” N.D.A.G. 2004-L-30.

¹⁰ A previous Attorney General’s opinion concluded that a predecessor committee, which had powers similar to those of the emergency services communications coordinating committee, had the authority to issue advisory and mandatory standards. See N.D.A.G. 93-L-123.

¹¹ N.D.C.C. § 57-40.6-12(2)(b).

communications coordinating committee's guidelines state that the fee revenue may be used for "operational costs," which may include "land and building purchase, construction, lease or rent, utilities, maintenance, repair, and remodeling essential for the support of the communication and 911 coordination functions. . . ." ¹² State law also provides that a city or county governing body "shall designate a governing committee of the emergency 911 telephone system which shall . . . [e]nsure that fee proceeds . . . are expended in accordance with guidelines developed [by the emergency services communications coordinating committee]." ¹³ Therefore, it is my opinion that the proceeds from a 911 fee may be used to acquire, construct, or lease space to implement and operate an emergency services communication system.

Sincerely,

Wayne Stenehjem
Attorney General

las/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. ¹⁴

¹² Expenditure Guidelines, Emergency Services Communication System Fee Revenue, Effective January 1, 2008.

¹³ N.D.C.C. § 57-40.6-10(1).

¹⁴ See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).