

LETTER OPINION
96-L-155

September 6, 1996

Mr. Lonnie Olson
Ramsey County State's Attorney
524 4th Ave #16
Devils Lake, ND 58301

Dear Mr. Olson:

Thank you for your letter regarding the emergency services communication system excise tax authorized under N.D.C.C. ch. 57-40.6.

N.D.C.C. § 57-40.6-02 provides:

The governing body of a county or city may impose an excise tax on the use of telephone access lines in accordance with the following requirements:

1. The governing body shall adopt a resolution that proposes the adoption of the excise tax permitted under this section. The resolution must specify an effective date for the tax which is no more than two years before the expected implementation date of the emergency services communication system to be funded by the excise tax. The resolution must include a provision for submitting the proposed excise tax to the electors of the county or city before the imposition of the tax is effective. The resolution must specify a tax that does not exceed one dollar per month per telephone access line.

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(Emphasis added). You ask how the taxing authority in this section would be affected if the system is actually implemented more than two years after the tax became effective.

Statutes must be construed, if possible, to give meaning to every word and phrase. First State Bank v. Moen Enterprises, 529 N.W.2d

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887, 891 (N.D. 1995); Stewart v. Ryan, 520 N.W.2d 39, 45 (N.D. 1994). Under N.D.C.C. § 57-40.6-02(1), the excise tax may be imposed for up to two years before the date the governing body expects the system to be implemented at the time the resolution is submitted to the voters. Interpreting the two-year requirement in this subsection to invalidate a resolution imposing a tax more than two years before the actual implementation date of the system would render meaningless the term "expected" as used in that subsection. Therefore, it is my opinion that the validity of the resolution authorizing an excise tax under N.D.C.C. ch. 57-40.6 is not affected by a departure from the expected implementation date indicated in the resolution. Once a resolution is properly adopted under this chapter, the excise tax is authorized for an initial six-year period. N.D.C.C. § 57-40.6-02.

N.D.C.C. § 57-40.6-02 as originally enacted required that the excise tax be implemented no more than one year before the "expected implementation date" of the system. 1985 N.D. Sess. Laws ch. 645. This requirement was changed to two years in 1991. 1991 N.D. Sess. Laws chs. 686, 687. Certain statements contained in the legislative history of the 1985 enactment and 1991 amendments are ambiguous and may either be interpreted as stating that a reasonable "expected" implementation date should be within two years, but not limiting the actual implementation date, or to suggest that the excise tax authorized in N.D.C.C. § 57-40.6-02 was intended to be imposed for a maximum of two years before the system is actually implemented. However, the statute itself does not contain such a restriction, nor does the statute appear ambiguous. "[W]hen the plain meaning of a statute is apparent, it is unwise and unnecessary to delve further." Little v. Tracy, 497 N.W.2d 700, 705 (N.D. 1993).

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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