

LETTER OPINION
97-L-175

October 24, 1997

Mr. John E. Greenwood
Stutsman County State's Attorney
511 2nd Ave SE
Jamestown, ND 58401

Dear Mr. Greenwood:

Thank you for your letter regarding a non-home rule county's authority to spend emergency funds levied under N.D.C.C. § 57-15-28. Your letter follows my September 26, 1997, opinion to you regarding a county's authority to lend funds to a nonprofit corporation providing services to senior citizens under N.D.C.C. § 11-11-58. See 1997 N.D. Op. Att'y Gen. 40.

N.D.C.C. § 57-15-28 provides in part:

The governing body of any county may levy a tax for emergency purposes not exceeding the limitation in subsection 22 of section 57-15-06.7. . . . Each county may create an emergency fund, and all taxes levied for emergency purposes by any county, when collected, must be deposited in the emergency fund, and must be used only for emergency purposes caused by the destruction or impairment of any county property necessary for the conduct of the affairs of the county, emergencies caused by nature or by the entry by a court of competent jurisdiction of a judgment for damages against the county. . . . Any unexpended balance, remaining in the emergency fund at the end of any fiscal year, must be kept in such fund.

The amount of tax levied under this section is limited to two mills. N.D.C.C. § 57-15-06.7(22).

For emergency funds to be used under this section by a non-home rule county, the emergency must be caused by: 1) the destruction or impairment of necessary county property, 2) an act of nature, or 3) the entry of a judgment for damages against the county. Letter from

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Attorney General Nicholas Spaeth to Gail Hagerty (January 28, 1985); 1974 N.D. Op. Att'y Gen. 136 (December 18 letter to John Garaas). See also N.D.C.C. §§ 44-33-11(1), and 24-05-20(2).

Although whether an "emergency" exists and whether one of the causes listed in N.D.C.C. § 57-15-28 apply to the "emergency" are questions of fact on which I cannot give an opinion, it appears from the situation presented in my recent opinion to you that destruction or impairment of necessary county property and entry of a judgment for damages against the county can be ruled out as causes for the county's consideration of a loan to the nonprofit corporation. Thus, unless the reason for the loan is an "emergency" caused by nature, which appears unlikely in this situation, it is my opinion that emergency funds levied under N.D.C.C. § 57-15-28 may not be spent by a non-home rule county to lend money to a nonprofit corporation providing services to senior citizens under N.D.C.C. § 11-11-58.

A limited exception in state law authorizes counties to indirectly spend emergency funds for non-emergency purposes. N.D.C.C. § 11-23-07 authorizes a county to make a transfer from one county fund to another, including an emergency fund created under N.D.C.C. § 57-15-28, when "the appropriation for any purpose is not sufficient to meet the expenditures required by law". Letter from Attorney General Nicholas Spaeth to Gayle Severson (March 18, 1988). However, county programs and activities for senior citizens under N.D.C.C. § 11-11-58 are merely authorized and are not required. Therefore, because the expenditure is not "required by law," it is my further opinion that a non-home rule county may not transfer emergency funds to another fund to lend money to a nonprofit corporation providing services to senior citizens under N.D.C.C. § 11-11-58.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

jcf/vkk