

N.D.A.G. Letter to DeMers (Oct. 28, 1991)

October 28, 1991

Honorable Judy L. DeMers
State Representative
1826 Lewis Boulevard
Grand Forks, ND 58203

Dear Ms. DeMers:

Thank you for your September 24, 1991, letter concerning a county commission's power to reimburse a county commissioner for payment of the bond required under N.D.C.C. § 44-11-01. The question you pose is whether the bond required by N.D.C.C. § 44-11-13 can be paid out of the county's general fund when all of the county commissioners sign a removal petition along with an additional 138 county residents.

N.D.C.C. § 44-11-13 provides that when qualified electors make charges against any of the officers listed in N.D.C.C. § 44-11-01, the relators, or individuals bringing the charge, shall file together with such charge, a good and sufficient indemnity bond in the sum of \$500. The purpose of this bond is so that the relators may be charged for the cost of the proceedings if they fail to maintain such charges.

The language of § 44-11-13 clearly states that the charges are to be made by qualified electors, and that such relators, the electors, will pay the indemnity bond. The statute does not authorize a county commission as a commission to bring charges or pay the bond. Consequently, the county commissioners are acting in their individual capacities rather than as a commission when they signed the petition. Although N.D.C.C. § 44-11-13 does not specifically authorize the county commission to make charges or pay the indemnity bond, it is necessary to look at the duties and powers of county commissions to determine if they have the power to reimburse the bond payor(s).

The rule is that a county commission "has only such implied powers as are reasonably necessary to enable it to exercise and perform those powers and duties which are expressly granted to and imposed upon it." Murphy v. Swanson, 198 N.W. 116, 115 (1924). N.D.C.C. § 11-11-14 arguably grants the county commissioners the power to do and perform any duties prescribed by law. N.D.C.C. § 11-11-11 states that the board shall superintend the fiscal affairs of the county and shall supervise the conduct of the respective county officers. Although the board has the duty to supervise county officers, it is not their duty to bring charges under N.D.C.C. § 44-11-13. Therefore, it is my opinion that a county commission does not have authority to pay the bond required by N.D.C.C. § 44-11-13 out of the county's general fund.

I trust this responds to your question.

Sincerely,

Nicholas J. Spaeth

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