

**N.D.A.G. Letter to Elhard (Dec. 14, 1989)**

December 14, 1989

Mr. Terry W. Elhard  
McIntosh County State's Attorney  
P.O. Box 248  
Ashley, ND 58413

Dear Mr. Elhard:

Thank you for your October 30, 1989, letter concerning the validity of an interstate fire protection district. According to your letter, there is a proposal for a South Dakota fire protection district to include North Dakota property and North Dakota residents as its members. Your letter asks whether North Dakota would honor such an interstate rural fire protection district and whether North Dakota taxation authority could be used to support it.

North Dakota law provides for the establishment of rural fire protection districts and a supporting tax levy. N.D.C.C. ch. 18-10. However, North Dakota law does not address a neighboring state's rural fire protection district which includes North Dakota property or residents.

It is a well established legal principle that state statutes have no extraterritorial effect. Instead, a state may legislate only upon persons and things within its territorial jurisdiction and a state law may not operate beyond those limits. Bigelow v. Virginia, 421 U.S. 809, 824 (1975); Magnolia Petroleum Co. v. Hunt, 320 U.S. 430 436 (1943).

The sovereign power of each state is coterminous with its territorial limits. Its law alone determines what acts may be performed there with impunity and from what acts liability enforceable in its courts shall flow.

Mertz v. Mertz, 3 N.E.2d 597, 598 (N.Y. 1936).

Applying this general principle of law, the provisions of N.D.C.C. ch. 18-10 may not be applied to a fire protection district which exists outside of the state of North Dakota. Instead, that property located within the state's boundaries would have to be established as a North Dakota rural fire protection district before the various provisions of N.D.C.C. ch. 18-10, including the taxing authority, would be available in the support of that district.

Perhaps the North Dakota portion of this rural fire protection district could be separately established pursuant to N.D.C.C. ch. 18-10. The South Dakota portion of the fire protection district could be established pursuant to South Dakota law. The board of directors of the North Dakota rural fire protection district does have the authority to execute contracts and to manage and conduct the business affairs of the district. N.D.C.C. § 18-10-06. An agreement with the South Dakota rural fire protection district for

cooperative and joint ventures would be a permissible exercise of the board of directors' governing authority. N.D.C.C. § 18-10-06(4), (5). However, to do this a North Dakota rural fire protection district must to be established.

I hope this information is helpful to you.

Sincerely,

Nicholas J. Spaeth

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