

**OPINION
62-45**

May 22, 1962 (OPINION)

CIVIL DEFENSE

RE: Counties - Use of Emergency Fund

This is in reference to your letter of May 17, 1962, concerning an opinion issued out of this office under date of February 27, 1958, to Mr. M. C. Fredricks, Stutsman County, State's Attorney, Jamestown, North Dakota. In your letter you ask us to revise the opinion covering the new Code references for the 1961 Session.

As you know, Chapter 37-17 of the North Dakota Century Code was amended and reenacted by the 1961 Legislative Assembly. The opinion to which you refer was issued by this office prior to the 1961 Legislative Assembly.

The opinion referred to above held:

In the light of the above referred to section 37-1703, subsection 3, subdivision c there can be no doubt that expenditures made by the county for civil defense purposes, if otherwise proper, would be mandatory obligations of the county within the meaning of section 57-1528. It is, therefore, the opinion of the Attorney General that the county commissioners when required by the state civil defense council may order the expenditures for civil defense purposes pursuant to chapter 37-17 of the 1957 Supplement to the North Dakota Revised Code of 1943 out of the emergency fund of the county. Furthermore, any unexpended balance remaining in a county special fund may be transferred to the emergency fund pursuant to section 11-1133 of the North Dakota Revised Code of 1943."

As you will note, one of the bases for the holding in the above opinion was section 37-17-03(3)(c) of the North Dakota Revised Code of 1943 which provided that the state civil defense council is empowered: "To require and direct the cooperation and assistance of the state and local governmental agencies and officials."

This wording was deleted from the Act by the 1961 Legislative Assembly.

We do note, however, that section 37-17-08 of the 1961 Supplement to the North Dakota Century Code authorizes the establishment of civil defense organizations in counties and provides, among other things, that "Each local organization for civil defense shall perform civil defense functions within the territorial limits as may be required pursuant to the provisions of section 37-17-09." Section 37-17-09 of the 1961 Supplement to the North Dakota Century Code authorizes the director of the local civil defense organization to enter into mutual aid arrangements for reciprocal civil defense aid and assistance with other agencies, public and private, in this State. This section further provides that such arrangements shall be consistent with the

state civil defense plan and program and "in time of emergency, it shall be the duty of each local organization for civil defense to render assistance in accordance with the provisions of such mutual aid arrangements." Certain other powers are given to the local civil defense organization in times of disaster as described by section 37-17-01.

There can be no doubt that expenditures made by the county for civil defense purposes, under the provisions of section 37-17-09 of the 1961 Supplement to the North Dakota Century Code, would be mandatory obligations of the county within the meaning of section 57-15-28. As such, it is our opinion that the county commissioners may order such expenditures for civil defense purposes to be paid out of the emergency fund of the county. We do not believe expenditures other than those prescribed by section 37-17-09 of the North Dakota Century Code could be said to be expenditures for emergency purposes as prescribed by section 57-15-28 of the N.D.C.C. Insofar as the opinion dated February 27, 1958, conflicts with the present opinion, the present opinion is to be considered as controlling.

LESLIE R. BURGUM

Attorney General