

OPINION
68-182

January 9, 1968 (OPINION)

Mr. Gene C. Grindeland
State's Attorney
Traill County

RE: Rural Fire Protection Districts - Boundaries - Determination by County Commissioners

This is in response to your request for an opinion on the construction of section 18-10-02 of the North Dakota Century Code, more specifically on the following language: "Thereupon the board or boards of county commissioners shall determine whether the proposed district is suited to the general fire protection policy of the county, or each of such counties, as a whole, determine the boundaries of the proposed district, whether as suggested in the petition or otherwise, * * *." The question arises out of a proposal to create a fire protection district.

The commissioners of a county or counties when more than one county is involved determine the ultimate boundaries. The main and principal consideration should be on the suitability of the area as a fire protection district. Emphasis must be given to the compactness of the area, accessibility, topography or terrain of the area. Other factors may be considered and weighed against the advantages and how such factors lend themselves to the overall suitability of a fire protection district. The language in question does not suggest arbitrary or blind adherence to existing boundaries of subdivisions. As an example, townships were created without regard to terrain, road facilities or inhabitants. They were created purely on an area basis. School districts, especially since reorganization, meander in accordance with school needs and objectives and are oriented in that direction.

The Legislature recognized that the needs of a fire protection district do not necessarily coincide with school districts, townships or counties and provided that the fire protection district may be comprised of an area equivalent to a township or more which may be situated either in a county or counties. Had the Legislature intended to place emphasis on administrative matters, such as levying and collecting taxes, it could have so provided and could have further provided that the boundaries of a fire protection district must coincide with existing boundaries of political subdivisions.

We are aware that the levying and collecting of taxes and the administrative processes resulting thereof from are matters which may be considered, but at the same time we must recognize that they are not the predominantly controlling factors.

It is therefore our opinion that the county commissioners of a county or counties in establishing the boundaries of a fire protection district must give substantial weight to

those factors which render an area suitable for a fire protection district. It is the suitability of the area which is predominant and should be controlling. In doing so, terrain, road facilities, accessibility, property and other factors may be considered. Arbitrary or blind adherence to boundaries of political subdivisions is not contemplated by current statutes and may be disregarded if same constitute a detriment to a well functioning fire protection district. We cannot, of course, substitute our judgement for that of the county commissioners who are concerned with the problem. Boundary lines may be considered if the advantages of same outweigh the disadvantages resulting therefrom. This necessarily means that each situation must resolve on its own particular facts.

HELGI JOHANNESON

Attorney General