

**OPINION
68-512**

December 17, 1968 (OPINION)

Mr. Chauncey T. Kaldor

City Attorney

RE: Townships - Fire Protection - Contract with City

This is in response to your letter in which you ask for an opinion on the following questions:

1. Can an organized township through its Board of Township Supervisors enter into an agreement with the city to pay the city so much a year for a period of years so the city can furnish fire protection for the township.
2. Is it necessary for the township to organize into a fire protection district under chapter 18 (Fires) and especially section 18-10-10 before such a contract would be a valid and binding agreement."

The authority to enter into a fire protection service contract is contained in section 18-10-10 of the North Dakota Century Code. This authority, as you will note, exists only between a rural fire protection district with another rural fire protection district, or with an incorporated city or village fire protection service. This strongly suggests that the authority to enter into such contract is under the conditions set forth in the aforementioned section.

The general authority given to the electors of a township, under section 58-03-07 of the North Dakota Century Code, more specifically subsection 17 thereof, refers to the purchase of fire fighting equipment in the manner provided for in Title 18. Also, by taking into account section 54-40-08 of the North Dakota Century Code, which pertains to the joint exercise of governmental functions, we could come to the conclusion that a township could jointly own fire fighting equipment with another governmental body, but neither of these provisions authorize the entering into a fire protection service contract and jointly owning or operating fire fighting equipment. None of the other general powers given to townships are broad enough to permit the entering into contracts for fire protection service.

We must also recognize the financial elements of such contracts. To be successful, a township must be in a position to raise the necessary revenues to pay for the services contracted for. Without the provisions of chapter 18-10, it is extremely difficult for a township to raise the needed funds for such contract. In addition to this, the general rule of law is that one board may not bind its successors unless there is specific authority to that effect. It further appears that where the legislature has specifically provided under what conditions a fire protection service contract may be entered into, such as in section 18-10-10, there is a presumption that this is the procedure to be followed to the exclusion of others.

Taking these various factors into account, it is, therefore, our opinion that a township may enter into a fire protection service contract with another rural fire protection district or city if such township first organized a rural fire protection district under the provisions of chapter 18-10.

It is our further opinion that the only real contract of any consequence may be entered into pursuant to the provisions of section 18-10-10 if such contract is to have a binding effect on all parties concerned.

HELGI JOHANNESON

Attorney General