

**OPINION
74-366**

March 27, 1974 (OPINION)

Mr. Erwin H. Brendel
State's Attorney
Renville County
Mohall, ND 58761

Dear Mr. Brendel:

This is in reply to your letter of March 12, 1974, in regard to a rural fire protection district.

You inform us that recently there was formed a new rural fire protection district headquartered at a named city in the northern part of your county. You state that as far as can be determined, all the preliminaries were properly handled, the notice of hearing was published, the hearing duly held by the Board of County Commissioners and, no one appearing at the hearing in opposition, the commissioners duly approved the formation of the district in accordance with the original petition.

You indicate that included within the boundaries of the new district is a portion of a named township generally comprising those sections in the northwest quarter thereof. You state that the free holders residing therein appear to have been unaware of any proceedings, did not see the notice published in the official paper and did not attend the hearing. You indicate also, that all of this named township is presently on a contract arrangement with the county seat's fire department where they pay a flat rate per annum plus an additional payment for a fire call for their protection. You indicate that they now want to know how they can get out of the new rural fire protection district into which they have apparently been incorporated.

You indicate that section 18-10-12 providing for changes in the boundaries of rural fire protection districts refers to "the manner prescribed by sections 18-10-02 and 18-10-03." You indicate that your question is to whom the "60 percent of the freeholders" as used in the first sentence of section 18-10-02 applies. You ask whether it applies to all the freeholders in the entire district or to the freeholders in the area which wants to secede.

The only "manner prescribed" in said section 18-10-02 and 18-10-03 commences with a petition "signed by at least sixty percent of the free holders whose names appear on the current tax schedules in the office of the county auditor and who appear to reside within the suggested boundaries of the proposed district."

After the district is organized, the reference is a bit ambiguous as to precisely what would be meant by "boundaries" of the district, when an 18-10-12 change of boundaries is proposed. We would necessarily assume, however, that it meant either boundaries of the existent district, or boundaries of what would be the district after the change of boundaries. We find no basis for construing it to mean

just the boundaries of the area wishing to secede. In this instance, as the proposed changed area would include less than the old boundaries, we believe the safer course would be to require at least sixty percent of the freeholders whose names appear on the current tax schedules in the office of the county auditor and who appear to reside within the actual boundaries of the currently existent district.

Another possible solution to the background problems here might be an enlargement of this district to include, excluded structures rather than a secession of part of the lands from the previously established district.

We hope our conclusion on the matter will be of assistance to you.

Sincerely yours,

Allen I. Olson

Attorney General