

**OPINION
75-72**

October 31, 1975 (OPINION)

Mr. Mervin Nordeng
Cass County State's Attorney
P.O. Box 2806
Fargo, ND 58102

Dear Mr. Nordeng:

This is in response to your letter of October 27, 1975, wherein you request an opinion of this office relative to Section 18-10-07 of the North Dakota Century Code concerning fire protection policy of rural fire protection districts and the financing of same. You submit the following facts and inquiry in your letter:

"I would like to request your opinion as to whether a rural fire protection district which was not created until after June 30, 1975, can levy a tax to be included in the 1975 property taxes which become due January 1, 1976. I refer you to Section 18-10-07 of the North Dakota Century Code which would normally require a June 30th deadline."

Initially, we must consider the provisions of Section 18-10-07 of the North Dakota Century Code, to the extent the same is relevant to the question which you have presented. The same provides as follows, in part:

"18-10-07. FIRE PROTECTION POLICY TO BE DETERMINED. The board of directors shall have the power and duty to determine upon a general fire protection policy for the district and shall annually estimate the probable expense for carrying out such contemplated program. Such estimate shall be certified by the president and secretary to the proper county auditor or county auditors, on or before June thirtieth of each year who shall levy a tax not to exceed five mills upon the taxable property within said district for the maintenance of the fire protection district for the fiscal year as provided by law. Said tax shall be:

1. Collected as other taxes are collected in the county;"
(Emphasis supplied).

It is clear that such departments are required by law to submit the budget requirements to the county auditor or auditors before June 30th of each year. If a department has not in fact been created by that deadline by procedural organization, it is then obvious that a budget estimate for that year cannot be submitted by the required deadline and that the same will then necessarily need wait until the following year. This does not, however, necessarily preclude any and all necessary financial requirements of such department to maintain some form of existence and activity until such time as moneys may be raised through taxation. We would note that Section 18-10-08 of the North Dakota Century Code, as amended, provides that the district or department may incur indebtedness which, if absolutely necessary, may

be used to continue the operations of the department until such time as moneys by taxation will be received.

In direct response to your inquiry then, we are of the opinion that in order to levy a tax to be included in the 1975 property taxes, it would be necessary, pursuant to the provisions of Section 18-10-07 of the North Dakota Century Code, to have certified the estimate of annual expense to the county auditor or auditors prior to June 30th of that year as required by the statute.

We trust that the foregoing general observations and expressions will adequately set forth our opinion upon the matter and will be of interest and assistance to you.

Sincerely yours,

ALLEN I. OLSON

Attorney General

State of North Dakota