

Office of the Attorney General
State of North Dakota

Opinion No. 85-28

Date Issued: August 14, 1985

Requested by: Gail Hagerty
Burleigh County State's Attorney

--QUESTION PRESENTED--

Whether Burleigh County commissioners may use the funds currently segregated in the insurance reserve fund established pursuant to N.D.C.C. § 32-12.1-08 to pay the premium for liability insurance.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that Burleigh County may use the funds currently segregated in the insurance reserve fund established pursuant to N.D.C.C. § 32-12.1-08 to pay the premium for liability insurance.

--ANALYSIS--

N.D.C.C. § 32-12.1-08(1) authorizes political subdivisions, including counties, to 'establish and maintain an insurance reserve for insurance purposes' to be funded out of the annual tax levy of the political subdivision. Subsection 2 of the Statute states that 'the fund established pursuant to this section shall be kept separate and apart from all other funds and shall be used only for the payment of claims against the political subdivision which have been settled or compromised, judgments rendered against the political subdivision for injuries arising out of risks established by this chapter, or costs incurred in the defense of claims.'

N.D.C.C. § 32-12.1-07(1) reads as follows:

1. The insurance authorized by this chapter may be provided by:
 - a. Self-insurance, which may be funded by appropriations to establish or maintain reserves for self-insurance purposes.
 - b. An insurance company authorized to do business in this state which a commissioner has determined to be responsible and financially sound, considering the extent of the coverage required.
 - c. Any combination of the methods of obtaining insurance authorized in subdivisions a and b.

Use of the moneys within the insurance reserve fund to purchase liability insurance would be a combination of the two specifically authorized methods of insurance described in N.D.C.C. § 32-12.1-07(1), and therefore would fall within the purview of subdivision c thereof. Additional support for this opinion is found in N.D.C.C. § 32-12.1-01 dealing with the Legislature's statement of intent in enacting this chapter, which reads in pertinent part as follows:

This chapter creates additional powers and optional and alternative methods for the single and specific purpose of enabling political subdivisions to pay and to compromise claims and judgments, to issue bonds to fund and satisfy the same, to levy taxes in amounts necessary for such purposes without respect to limitations otherwise existing . . . [Emphasis supplied.]

It seems clear that in enacting this chapter the Legislature took into consideration the fact that no one method of insuring against liability would adequately meet the needs of all political subdivisions, and that it was necessary to provide the subdivisions with a certain degree of flexibility in providing that protection in the manner that best suited their individual needs.

--EFFECT--

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.

Nicholas J. Spaeth
Attorney General

Assisted by: Lynn C. Jordheim
Solicitor General