

**LETTER OPINION**  
**95-L-142**

June 20, 1995

Mr. August C. Draeb  
City Attorney  
P.O. Box V  
Hebron, ND 58638

Dear Mr. Draeb:

Thank you for your letter inquiring about the inclusion of the Hebron City Fire Department and the Hebron Volunteer Ambulance Service within the audit review and report of the city of Hebron.

N.D.C.C. § 54-10-14 requires biennial audits of various political subdivisions including cities, rural fire protection districts, rural ambulance service districts, and firemen's relief associations. However, no separate auditing requirement is provided for city fire departments or ambulance services, whether paid or volunteer. N.D.C.C. § 54-10-14 allows any political subdivision, at its option, to be audited by a certified public accountant or licensed public accountant rather than by the State Auditor. In either case, the accountant must comply with generally accepted government auditing standards for audits of political subdivisions, as a condition to the approval of the audit by the State Auditor and authorization for the political subdivision to pay the public accountant for auditing services. N.D.C.C. § 54-10-14.

The generally accepted government auditing standards that are required to be followed by the State Auditor are contained in a publication entitled "Government Auditing Standards" published by the Comptroller General of the United States. That publication states that financial audits, among other things, provide a reasonable assurance about whether the financial statements of an audited entity present fairly the financial position, results of operations, and cash flows in conformity with generally accepted accounting principles. Government Auditing Standards (1994), pp. 12-13. The authoritative body for generally accepted accounting principles is, for government auditing purposes, the Governmental Accounting Standards Board (GASB). Government Auditing Standards (1994), p. 13, n. 1. The statements of

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standards or principles of the GASB are contained in a GASB publication entitled "Governmental Accounting and Financial Reporting Standards."

In GASB Statement No. 14, the concept underlying the definition of the financial reporting entity is that elected officials are accountable to their constituents for their actions. Governmental Accounting and Financial Reporting Standards 322 (1993). The financial reporting entity is defined to consist of the primary government, organizations for which the primary government is financially accountable, and other organizations for which the nature and significance of their relationship with the primary government are such that exclusion would cause the reporting entity's financial statements to be misleading or incomplete. Id. "The nucleus of a financial reporting entity usually is a primary government." Id.

According to GASB Statement No. 14, "[a] primary government is any state government or general purpose local government (municipality or county)." Id. at 323. A primary government is also a special-purpose government (for example, a school district or a park district) that meets all of the following criteria:

- a. It has a separately elected governing body.
- b. It is legally separate.
- c. It is fiscally independent of other state and local governments.

Id. "A primary government consists of all the organizations that make up its legal entity. All funds, organizations, institutions, agencies, departments, and offices that are not legally separate are, for financial reporting purposes, part of a primary government. If an organization is part of a primary government, its financial data should be included with the financial data of the primary government." Id. A legally separate organization is one created as a body corporate or a body corporate and politic, or one that otherwise possesses the corporate powers that would distinguish it as being legally separate from the primary government. Id. Fiscal independence exists if the entity can determine its budget without another government's having the authority to approve and modify the budget, the entity can levy taxes or set rates or charges without approval by another government, and if the entity can issue bonded debt without approval by another government, among other elements indicated in GASB Statement No. 14. Id.

Cities have the power to purchase, manage, and maintain a system of waterworks including providing for a water supply, fire stations, fire signals, fire engines, or fire apparatus

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that may be of use in the prevention and extinguishment of fires. N.D.C.C. § 40-05-01(36). Cities may also purchase firefighting equipment on an emergency basis and may levy a tax to provide additional funds to meet operational costs of establishing fire stations upon approval of the electors. N.D.C.C. §§ 40-05-09 and 40-05-09.1.

N.D.C.C. § 26.1-03-17 provides for the collection of an insurance premium tax on certain lines of insurance. The revenue from that insurance tax is deposited into the insurance tax distribution fund for distribution to eligible entities. N.D.C.C. § 18-04-04.1. Eligible entities are cities, one or more townships, or fire districts. N.D.C.C. § 18-04-01. The State Insurance Commissioner distributes the insurance premium tax revenue to eligible entities that have filed certificates of existence pursuant to N.D.C.C. § 18-04-02. N.D.C.C. § 18-04-01. The Insurance Commissioner distributes revenues for city fire departments to the city auditor. N.D.C.C. §§ 18-04-05, 18-04-07. The manner in which the insurance premium tax proceeds are disbursed by the city auditor to the fire department depends on how the fire department is organized. N.D.C.C. § 18-04-07.

A city may establish, maintain, contract for, or otherwise provide ambulance service for the city, and may buy, rent, lease, or otherwise contract for necessary vehicles, equipment, facilities, or services to provide for the ambulance service. N.D.C.C. §§ 23-12-08, 57-15-51.

As indicated above, North Dakota cities have various powers with respect to fire and ambulance departments serving those cities. However, no North Dakota statute provides for a city government entity separate from the city to provide fire or ambulance services. Therefore, if a city's fire or ambulance department is not a nonprofit corporation contracting with the city, a rural fire protection district organized under N.D.C.C. ch. 18-10, a rural fire department certified by the State Fire Marshal (N.D.C.C. § 18-04-04), or a rural ambulance service district organized under N.D.C.C. ch. 11-28.3, then the city fire or ambulance department is part of the primary government of the city for auditing purposes.

The certificate of fire department existence filed with the State Fire Marshal for the Hebron Volunteer Fire Department in January 1995 indicates that the reporting entity is the Hebron Volunteer Fire Department, and that its funding is in the annual budget of the city of Hebron. State Health Department records for the licensing of ambulance services under N.D.C.C. ch. 23-27 show a license issued to the Hebron Ambulance Service. Your letter indicates that the Hebron Ambulance

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Service "operates under the" Hebron Volunteer Fire Department. This statement implies that the Hebron Ambulance Service may receive taxpayer funds through the Hebron Volunteer Fire Department.

It is my opinion that if the Hebron Volunteer Fire Department or Hebron Ambulance Service is funded entirely or in part through taxpayer funds, including insurance premium taxes payable to the city or other city budgeted funds, and it is not a rural fire protection district, rural ambulance district, a rural fire department certified by the State Fire Marshal, or a nonprofit corporation merely contracting with the city of Hebron, then all of its financial records are part of the primary government of the city of Hebron according to the Governmental Accounting Standards Board and, therefore, must be audited with the regular audit of the city of Hebron for compliance with generally accepted government auditing standards.

Sincerely,

Heidi Heitkamp  
ATTORNEY GENERAL

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