

LETTER OPINION
95-L-249

October 27, 1995

Mr. Ted D. Seibel
Wells County States Attorney
PO Box 347
Fessenden, ND 58438

Dear Mr. Seibel:

Thank you for your October 5, 1995, letter concerning whether the Wells County Board of Commissioners (Board) may use emergency funds collected under N.D.C.C. § 57-15-28 to make the courthouse accessible to persons with disabilities. You advise that the Board "must install an elevator to make the upper levels of the courthouse...accessible" under the American with Disabilities Act of 1990 (ADA). 42 U.S.C.A. §§ 12101-12213; 47 U.S.C.A. §§ 225,611. Whether it is necessary to install an elevator to make the upper levels of the courthouse accessible is an administrative fact-specific decision to be made by the Board. See N.D.C.C. § 54-21.3-04.1; 28 C.F.R. §§ 35.150(a)(1)(b), (b)(1), 35.151(c). You specifically ask whether N.D.C.C. § 57-15-28 permits use of emergency funds to make alterations intended to bring the courthouse into compliance with the ADA.

N.D.C.C. § 57-15-28 concerns the creation, maintenance and use of an emergency fund in each county. N.D.C.C. § 57-15-28 provides in pertinent part that the emergency fund "must be used only for emergency purposes caused by the destruction or impairment of any county property necessary for the conduct of the affairs of the county...." Other permitted uses of the emergency funds do not apply in this situation. The section also prohibits certain uses which are not relevant to this matter.

The intent of the Legislature must be sought initially from the language of a statute. County of Stutsman v. State Historical Soc'y, 371 N.W.2d 321, 325 (ND 1985). If not defined, words in a statute are to be given their plain, ordinary, and commonly understood meanings. Kim-Go v. J. V. Furlong Enterprises, Inc., 460 N.W.2d 694, 696 (ND 1990); N.D.C.C. §§ 1-02-02, 1-02-03. An "emergency" is an "unexpected situation...that demands immediate action." The Am. Heritage Dictionary 448 (2d coll. ed. 1991). "Impairment" means the diminishment "in strength, value, quantity or quality." The Am. Heritage Dictionary at 644.

Mr. Ted D. Seibel
October 27, 1995
Page 2

Whether an emergency exists and whether county property is impaired is a determination that must be made by the Board. This is a fact determination that our office is not authorized to make. See letter from Attorney General Nicholas J. Spaeth to Gail Hagerty (January 28, 1985) (relating to construction of new court facilities and courtroom remodeling); letter from Attorney General Robert O. Wefald to Gail Hagerty (July 18, 1983) (relating to expansion of an aged civil defense system); letter from Chief Deputy Attorney General Gerald W. Vandewalle to John M. Olson (November 1, 1976) (relating to remodeling of the Burleigh County jail); letter from Attorney General Allen I. Olson to John O. Garaas (December 18, 1974) (relating to a Cass County jail addition); and letter from Assistant Attorney General Gerald W. Vandewalle to John O. Garaas (October 7, 1974) (relating to remodeling to correct a structural defect in the Cass County jail). Copies of the foregoing letters which address questions similar to yours are enclosed for guidance in this matter. See also Brusegaard v. Schroeder, 201 N.W.2d 899,911 (N.D. 1972) (approving use of emergency funds to supplement other available funds to replace a dangerous county shop building upon adoption of a resolution by county commissioners finding an emergency and an impairment of county property authorizing use of emergency funds).

No individual with a disability may be denied the benefit of county services, programs or activities under federal regulations. 28 C.F.R. § 35.130(a). The county is required to operate each service, program or activity to be readily accessible to and usable by individuals with disabilities. 28 C.F.R. § 35.150(a). One method of providing accessibility is to make alterations to existing buildings. 28 C.F.R. § 35.150(b)(1). At this date, structural changes to comply with the ADA are to be made "as expeditiously as possible." 28 C.F.R. § 35.150(c).

In my opinion, emergency funds are available under N.D.C.C. § 57-15-28 to make alterations required by the ADA if the Board determines there is an emergency and that the denial of access to county services for individuals with disabilities because of the failure to make such alterations is an impairment of the courthouse.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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Mr. Ted D. Seibel
October 27, 1995
Page 2

Enclosures