

LETTER OPINION
95-L-63

March 9, 1995

Charles Wilder
Williams County States Attorney
P.O. Box 2047
Williston, ND 58802-2047

Dear Mr. Wilder:

Thank you for your letter requesting clarification regarding the application of N.D.C.C. ch. 57-40.6. In your letter you explain that Williston has implemented a 911 emergency communications system. You further explain that the Williams County Commission put the issue of whether the people of Williams County wanted a county-wide 911 system on the ballot of the November, 1994, election. The results of the election indicated county-wide support for a 911 system. However, the city of Ray did not approve the measure. Based upon this information you ask a number of questions.

Your first question is whether the affirmative vote on the Williams County Measure mandates the implementation of a 911 system within Williams County. The Williams County measure simply asked: "Shall Williams County implement a county-wide emergency 911 system?" The language of the measure did not comply with N.D.C.C. ch. 57-40.6, which provides specific information that must be included on the ballot. See N.D.C.C. ? 57-40.6-02. It is also my understanding that the County Commission did not adopt a resolution that complied with N.D.C.C. ch. 57-40.6. See N.D.C.C. ?? 57-40.6-02 (resolution must specify an excise tax that does not exceed \$1.00 per month per telephone access line, specify effective date for the tax, and include a provision for submitting the proposed excise tax to the electors), 57-40.6-03 (resolution must include a requirement that the telephone company collect a tax from the subscriber), 57-40.6-04 (resolution must include adequate procedures for the administration and collection of the tax and that the tax be paid by the telephone company within thirty days after it is collected from the subscriber).

Because the county commission did not adopt a resolution in compliance with N.D.C.C. ch. 57-40.6, and because the measure did not comply with N.D.C.C. ch. 57-40.6, the vote on the Williams County Measure does not mandate the implementation of a 911 system within Williams County. To be effective the resolution and measure must comply with N.D.C.C. ch. 57-40.6.

The affirmative vote on the Williams County Measure can give guidance, however, to the Commission on how to proceed in this matter.

Your second question is whether a county can implement an emergency service communications system in the boundaries of a

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political subdivision within the county that did not vote to approve the measure. N.D.C.C. ? 57-40.6-02(2) provides that the question of the adoption of the excise tax must be submitted on a ballot. It further provides that "[t]he tax is not effective unless it is approved by a majority of the electors voting on the proposition." This subsection simply requires that a majority of the electors approve the excise tax; it does not require that each political subdivision do so. Therefore, it is my opinion that if the majority of electors in a county vote to implement a county emergency service communications system, the system can be implemented throughout the area of the county voting on the issue, including within the boundaries of a political subdivision that did not approve implementation of the emergency service communications system.

Your third question is what happens if a county votes to implement a county-wide emergency service communications system and a city within the county is already operating such a system. Specifically, you question whether the excise tax currently paid to the city would then be paid to the county.

Subsection 4 of N.D.C.C. ? 57-40.6-02 provides that "[i]n any geographic area, only one political subdivision may impose the excise tax." Thus, if the city is already imposing an excise tax, the county may not also impose such a tax. If one or more cities already has an emergency service communications system in place when a county adopts a resolution regarding a county-wide emergency service communications system, the county resolution should apply only to the areas where no emergency service communications system currently exists. Because the measure should only affect areas without a current system, including imposition of the excise tax, only residents of areas where no service currently exists should be allowed to vote on the measure.

Your final question is whether the Williams County Commission can call a special election to vote on the implementation of the excise tax for an emergency service communications system. Former Attorney General Nicholas J. Spaeth previously addressed this issue and opined that a county board of commissioners could not call a special election to vote on the implementation of the excise tax to fund an emergency service communications system. See Letter from Attorney General Spaeth to State's Attorney Allen Kopyy (March 26, 1991). A copy of Attorney General Spaeth's opinion regarding this issue is enclosed.

Sincerely,

Charles Wilder
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Heidi Heitkamp
Attorney General

DAB/mh