

LETTER OPINION
96-L-24

February 28, 1996

Mr. Owen K. Mehrer
Stark County State's Attorney
P.O. Box 130
Dickinson, ND 58602-0130

Dear Mr. Mehrer:

Thank you for your January 19, 1996, letter asking if voter disapproval of a \$1.00 excise tax for emergency 911 telephone service would affect a 50¢ excise tax in effect at the time of the election.

Authority for imposing the excise tax for emergency 911 (E911) telephone service was enacted in 1985 and codified as N.D.C.C. ch. 57-40.6. (1985 N.D. Sess. Laws ch. 645.) The chapter as enacted in 1985 required a governing body of a city or county desiring to impose the excise tax to adopt a resolution concerning E911 telephone service which contained elements:

1. Proposing the adoption of the excise tax.
2. Specifying an effective date for the tax.
3. Requiring it be submitted to the electors before the imposition of the tax.
4. Specifying the tax may not exceed 50¢ per telephone access line.
5. Requiring the telephone company to collect the tax from the telephone subscribers.
6. Providing procedures for the administration and collection of the tax, including reimbursing the telephone company for actual costs of administration in tax collection.
7. Requiring the telephone company to pay the amount of the tax to the governing body within 30 days after it is collected from the subscriber.

1985 N.D. Sess. Laws ch. 645, §§ 2, 3, and 4. The election ballot on the question of imposing the tax must include in its title the

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maximum monthly rate of the proposed tax. 1985 N.D. Sess. Laws ch. 645, § 2.

In 1991, N.D.C.C. § 57-40.6-02(1) was amended to allow imposing the tax not more than two years before implementing the E911 service, and to allow the maximum tax to be \$1.00. 1991 N.D. Sess. Laws ch. 687. That amendment was not made retroactive. N.D.C.C. § 1-02-10.

In 1995, N.D.C.C. § 57-40.6-02(2) and (3) were amended to state that the initial period of E911 excise tax imposition was six years, and that the tax could be reimposed for six additional years without resubmitting the question to the electors. 1995 N.D. Sess. Laws ch. 574. The 1995 amendments were not made retroactive. N.D.C.C. § 1-02-10.

Words in a statute are to be understood in their ordinary sense, and must be construed according to the approved usage of the language. N.D.C.C. §§ 1-02-02 and 1-02-03. A statute should be construed so that an ordinary person reading it would get from it the usual, accepted meaning. Wills v. Schroeder Aviation, Inc., 390 N.W.2d 544, 545 (N.D. 1986). Using these rules of statutory construction, the following interpretations apply.

If a city or county proposed E911 service before July 1991, the maximum tax rate was 50¢ per telephone access line, and, if approved, the tax could be reimposed for six years beyond the initial approval year without resubmitting the question to the electors.

If a city or county proposed E911 service after July 1991, the maximum tax rate was \$1.00 per access line and, if approved, the tax could be reimposed for six years beyond the initial approval year without resubmitting the question to the electors.

If a city or county proposed E911 service after July 1995, the approval by the electors was for an initial six years, and, if approved, the tax can be reimposed at the end of that first six years for an additional six years without resubmitting the question to the electors.

Therefore, if a city or county proposed E911 service before July 1995, and it was approved by the electors, it could stay in effect by reimposition by the governing body for not more than six years beyond the initial approval year without being resubmitted to the electors. However, the six-year continuation of the tax after the initial approval year has always been permissive for the city or county governing body. That is, if the city or county governing body wanted

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to resubmit the E911 excise tax question to the electors every year, it could do so.

Since its original enactment, N.D.C.C. ch. 57-40.6 has provided only one procedure for governing bodies to follow to put the E911 excise tax question before the electors. That procedure is by passing a resolution with all of the required provisions and placing the issue before the electors by an appropriate ballot title. The imposition of the tax either passes or fails in total; there is no provision in the statute for splitting the question of the authority for the tax from the amount of the tax. N.D.C.C. § 57-40.6-02. The ballot must be worded to only permit a yes or no vote. N.D.C.C. § 57-40.6-02(2). Therefore, when a governing body puts the E911 excise tax question before its electors as required by law, the law only permits placing the entire issue of the E911 excise tax before the electors, rather than merely a question on part of the issue, such as changing the excise tax rate. Each time the E911 excise tax issue is placed before the electors of a city or county it constitutes an original or initial vote under the law, and if the electors disapprove the question, then the authority for any excise tax under N.D.C.C. ch. 57-40.6 ceases.

It is my opinion, therefore, that if a city or county has in place an E911 excise tax voted in before August 1, 1995,¹ and its governing body places the issue of the same or different amount of excise tax before its electors as either required or authorized by law, if the electors disapprove that excise tax, the authority for its collection in any amount in that city or county also ceases.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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¹ The result would be different if the excise tax were voted in after the 1995 amendments to N.D.C.C. § 57-40.6-02 since the statute now provides that a vote for passage of the excise tax imposes the tax for a six-year period. N.D.C.C. § 57-40.6-02(2).