

OPINION
55-57

January 12, 1955 (OPINION)

FIRE DEPARTMENTS

RE: Servicing Rural Areas

Am in receipt of your request for an opinion as to whether or not a fire department, which has qualified under section 18-0405, 1953 Supplement, North Dakota Revised Code 1943, for the additional one hundred dollars for offering rural service, can charge for a fire call made within the extended area beyond the corporate limits of a city or village.

Subsection 37, section 40-0501, North Dakota Revised Code 1943, indicates the idea of a public duty by a fire department to serve outside of the corporate limits of the city or village when it states:

"To use its fire department to attend fires and render assistance to other municipalities within or without this state, or to private property, including farm buildings located outside the city limits, and the fire department, its members, and apparatus, when engaged outside the limits of the municipality, shall be deemed to be engaged in the performance of a public duty as fully as if serving within the limits of the municipality."

As a practical matter fire departments have limited their services to the corporate boundaries of the municipality, or if they have gone beyond the limits they have so indicated on the certificate of existence which is filed with the office of the state fire marshal. Because it is not mandatory that a fire department give rural service and indicates same on its certificate of existence, it would seem the aforementioned section 18-0405, 1953 Supplement to North Dakota Revised Code 1943 which provides:

"* * *The commissioner of insurance shall certify to the state auditor on or before June first of each year an additional one hundred dollars to be paid to each city or village fire department performing service outside of its incorporated limits.* * *",

would require that a fire department indicating rural service on its certificate of existence and thereby receiving the additional one hundred dollars would be duty bound to service the rural area and that it could not make an additional charge for such service. However, a fire department not servicing a rural area and not receiving the additional one hundred dollars could charge for services outside of the area indicated by the certificate of existence insofar as such charges are not inconsistent with its constitution and by-laws. It could do this under the law of contracts, by a contract in writing, or on the theory of a reasonable charge for services rendered. This is particularly indicated by

section 18-0610, 1953 Supplement to North Dakota Revised Code 1943,
which states:

"The electors of each township shall have the power at the annual township meeting to authorize and empower the board of township supervisors to provide by contract or otherwise, for the prevention of, protection from and extinguishment of fires within the townships, in such manner as the board of supervisors shall deem advisable."

LESLIE R. BURGUM

Attorney General