

OPINION
58-64

February 27, 1958 (OPINION)

COUNTIES

RE: Funds - Use for Civil Defense

We have received your request of February 6, 1958, for an opinion of the availability of county funds for civil defense purposes. Pursuant thereto, we submit the following conclusions:

Chapter 37-17 of the 1957 Supplement to the N.D.R.C. of 1943 for the purpose of implementing a civil defense program establishes a state civil defense council which is empowered under section 37-1703, subsection 3, subdivision c "To require and direct the cooperation and assistance of the state and local governmental agencies and officials;" We interpret this section to mean, for example, that the state civil defense council can require county governments to expend money for civil defense purposes within the limitations imposed by the chapter.

The county commissioners have the duty under section 11-1111 of the N.D.R.C. of 1943 to superintend the fiscal affairs of the county and to supervise the conduct of the respective county officers. They also have the power under section 11-1114 of the N.D.R.C. of 1943 to do and perform such duties as are prescribed by law. These sections, we believe, provide the legal foundation for the cooperation and assistance referred to in section 37-1703, subsection 3 subdivision c of the 1957 Supplement. Under these sections it is the duty of the commissioners to determine whether requested civil defense expenditures are reasonable and necessary.

Section 57-1528 provides for a one mill tax levy for an emergency fund for the county which is to be considered outside the county budget. The emergency fund may be expended only for such emergency purposes as the governing body of the county by resolution shall determine to meet the mandatory obligations of the county. The expenditure of funds for civil defense purposes is, we believe, the expenditure of funds for emergency purposes. Civil defense plans are for the purpose of alleviating and mitigating future emergency situations. There is no requirement in the statute that a present emergency exists before the emergency fund may be expended, therefore, we believe that the expenditure may be made for anticipated emergency purposes. The situation is not unlike that which exists when an individual pays an insurance premium rather than setting aside of a sum of money to indemnify himself for casualty losses.

In the light of the above referred to section 37-1703, subsection 3, subdivision c there can be no doubt that expenditures made by the county for civil defense purposes, if otherwise proper, would be mandatory obligations of the county within the meaning of section 57-1528. It is, therefore, the opinion of the Attorney General that the county commissioners when required by the state civil defense

council may order the expenditures for civil defense purposes pursuant to Chapter 37-17 of the 1957 Supplement to the N.D.R.C. of 1943 out of the emergency fund of the county. Furthermore, any unexpended balance remaining in a county special fund may be transferred to the emergency fund pursuant to section 11-1133 of the N.D.R.C. of 1943.

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