

## **N.D.A.G. Letter to Hagerty (July 18, 1983)**

July 18, 1983

Gail Hagerty  
Burleigh County State's Attorney  
Burleigh County Courthouse  
514 E. Thayer Avenue  
Bismarck, North Dakota 58501

Dear Gail:

Thank you for your letter of June 23, 1983, inquiring as to the legality of using the County Emergency Fund to finance expansion of the civil defense system in the City of Bismarck.

You indicate that because of the age of the present civil defense system and rapid growth of the city, the Burleigh County Commission believes that there exists an "impairment of county property necessary for the conduct of the affairs of the county" within the meaning of Section 57-15-28 of the North Dakota Century Code, which would justify the use of the emergency fund provided for in that section.

The term "impairment" is not defined by statute. Webster's New Twentieth Century Dictionary (Second Edition) defines that term as an ". . . impairing or being impaired; . . . damage; injury, deterioration." The word "impair" is defined by the same source as ". . . to become worn out; to deteriorate."

If, because of age, the current system has become worn out, deteriorated, damaged or injured, such condition would fall within the definition of "impairment" under Section 57-15-28, N.D.C.C.

However, since we are not authorized to determine questions of fact, the determination as to the existence of an impairment, as defined above, is a conclusion which the Burleigh County Commission must make, based upon a review of all available relevant facts. Likewise, the determination as to whether an emergency exists, as is required by Section 57-15-28, N.D.C.C., is also not ours to make. The word "emergency" is not defined within that chapter.

However, the County Commission may be guided by Webster's Seventh New Collegiate Dictionary, at page 270, which defines "emergency", in part, as ". . . an unforeseen combination of circumstances or the resulting state that calls for immediate action; . . . a pressing need. . . ."

As indicated above, the existence of an emergency and of an impairment are factual determinations to be made by the County Commission based upon information which is not available to us.

I am enclosing copies of two opinions issued by this office to Cass County State's Attorney John O. Garaas on October 7, 1974 and December 18, 1974, which arrive at a similar conclusion.

Sincerely,

Robert O. Wefald

bww  
Enclosures