

**LETTER OPINION
2020-L-06**

September 23, 2020

Mr. Allen Koppy
Morton County State's Attorney
210 2nd Ave NW
Mandan, ND 58554-3124

Dear Mr. Koppy:

You have asked this office for an opinion regarding the role of a county commission in the budget for a district board of health. Specifically, you ask whether N.D.C.C. § 23-35-07 allows a county commission that is a member of the health district to have a role in approving the budget for the district board of health. It is my opinion that the county commission has a statutory duty to sit on the joint board of county commissioners to approve the budget of a health district.

ANALYSIS

A health district formed by combining counties or cities is a separate political subdivision from the member counties or cities possessing only those powers specifically provided by law.¹ Custer District Health consists of five member counties.² You explain that there is a disagreement among the member counties as to how the multi-county budgeting process should proceed insofar as the extent of the participation by each member-county of the five-county district.

The preparation and approval of a health district's budget is set out in N.D.C.C. ch. 23-35.

A multi-county district must submit its budget to the "joint board of county commissioners" for approval.³

The "joint board of county commissioners" is defined in that chapter as "the boards of county commissioners of two or more counties acting together in joint session."⁴

¹ N.D.A.G. 2005-L-11; N.D.A.G. 2004-L-05. See, e.g., *Murphy v. Swanson*, 198 N.W. 116, 119 (N.D. 1924); *Ebach v. Ralston*, 469 N.W.2d 801, 804 (N.D. 1991).

² Member counties are Morton County, Grant County, Mercer County, Oliver County, and Sioux County.

³ N.D.C.C. § 23-35-07(1).

⁴ N.D.C.C. § 23-35-01(5).

Therefore, N.D.C.C. § 23-35-07 contemplates a meeting of every member board of county commissioners to review the proposed budget and comments of the public. In this way, every county commission has an opportunity to evaluate the proposed budget.

According to your correspondence, the meeting of the joint board of county commissioners as provided in N.D.C.C. § 23-35-07 is rarely used in your district. Instead, it is common for this district to have a conference call of the respective county auditors who vote on the record on the district's proposed budget as a "proxy" for their board of county commissioners. This method of approving the health district's budget was found to be more convenient than convening a meeting of five different boards of county commissioners.

In a previous opinion, this office explained that the "Legislature has specifically addressed the authority of many state and other entities to conduct business via proxy," citing numerous statutes in which a proxy vote is authorized.⁵ "Clearly, when the Legislature has intended that a state entity have this power, it has provided it."⁶ Chapter 23-35, N.D.C.C., does not authorize the county commission to vote by proxy.

A county is a political subdivision of the state, and its rights and powers are determined by law.⁷ It is the member county commissions that make up the joint board of county commissioners, not the county auditors. Convenient or not, without a statutory change, it is my opinion that the county commission has a statutory duty to sit on the joint board of county commissioners to approve the budget of a health district.⁸

Sincerely,

Wayne Stenehjem
Attorney General

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.⁹

⁵ N.D.A.G. 2004-L-08.

⁶ *Id.*

⁷ N.D.A.G. 2014-L-08.

⁸ Meetings may be held by conference call or other electronic means if done so in accordance with open meetings law. See N.D.C.C. §§ 44-04-17.1(9), 44-04-19.

⁹ See *State ex rel. Johnson v. Baker*, 21 N.W.2d 355 (N.D. 1946).