

**LETTER OPINION
2006-L-26**

August 31, 2006

Ms. Nici Meyer Clarkson
Bowman County State's Attorney
PO Box 180
Bowman, ND 58623-0180

Dear Ms. Clarkson:

Thank you for your letter asking whether a telephone exchange access service provider providing emergency 911 service is permitted to charge Bowman County a fee of \$2 for each change to the county 911 database. Based on the following analysis, it is my opinion that a cooperative telephone exchange access service provider is not prohibited from imposing a fee for providing monthly updates to the county 911 database.

ANALYSIS

Section 57-40.6-06, N.D.C.C., provides "[a]ny telephone exchange access service provider providing emergency 911 service shall provide current customer names, addresses, and telephone numbers to each 911 coordinator or public safety answering point within each 911 system." You indicate that the Bowman County 911 database is maintained in the county emergency manager's office. The telephone exchange access service provider (the "Provider") supplies each 911 coordinator with monthly changes to the information it is required to provide under N.D.C.C. § 57-40.6-06. The Provider charges the county \$2 for each change to the subscriber database. For example, the Provider charges \$2 each time a subscriber changes his or her "subscriber service address" or telephone number, and for each new and departing subscriber.

Chapter 57-40.6, N.D.C.C., allows counties and cities to establish emergency services communication systems and to impose a fee of up to "one dollar per month per telephone access line and per wireless access line" to fund these communication systems. Fees collected from subscribers to operate the emergency services communication system may be used only for certain purposes, including payments "for implementing, maintaining, or operating the... system."¹ The service provider, however, is entitled to keep the actual costs of administration in collecting the fee, not to exceed five percent of the fee collected.² You ask whether the Provider may charge fees for providing the monthly changes it makes to the 911 database in addition to collecting and keeping the portion of the \$1 fee authorized under N.D.C.C. ch. 57-40.6.

¹ N.D.C.C. § 57-40.6-05.

² N.D.C.C. § 57-40.6-04.

The Provider is a cooperative association formed under N.D.C.C. ch. 10-15. “The powers of cooperative corporations or associations are as broad and comprehensive as those of an individual unless the power is expressly prohibited by law or its articles of incorporation.”³ Section 10-15-03, N.D.C.C., authorizes a cooperative association to “[m]ake and alter bylaws, consistent with its articles and the laws of this state, for the administration and regulation of its affairs.”⁴ A cooperative association also has the power to exercise “all powers necessary or convenient to effect its purposes.”⁵

In N.D.A.G. 95-L-226, this office concluded that, because nothing in state law authorized or prohibited a cooperative from holding meetings by conference call, and because it had the authority to exercise all powers convenient and necessary to effect its purposes, a cooperative could meet by conference call. Similarly here, there is no provision in either N.D.C.C. ch. 57-40.6 or ch. 10-15 which expressly authorizes or prohibits a cooperative telephone exchange access service provider to charge for the updates. Because cooperatives have the authority to exercise all powers necessary and convenient to effect their purposes, it is my opinion that, unless otherwise specified in its articles of incorporation or its bylaws, the Provider is not prohibited from charging fees for providing the updates.

Sincerely,

Wayne Stenehjem
Attorney General

mjm/vkk

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.⁶

³ 6 William Meade Fletcher et al., Fletcher Cyclopedia of the Law of Private Corporations § 2537 (perm. ed., rev. vol. 2005).

⁴ N.D.C.C. § 10-15-03(8).

⁵ N.D.C.C. § 10-15-03(12); 6 William Meade Fletcher et al, Fletcher Cyclopedia of the Law of Private Corporations § 2536 (perm. ed., rev. vol. 2005) (a cooperative association generally has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs that are not contrary to law or its articles of incorporation).

⁶ See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).