

**LETTER OPINION**  
**96-L-35**

March 12, 1996

Mr. Howard D. Swanson  
Office of City Attorney  
City of Grand Forks  
PO Box 12909  
Grand Forks, ND 58208-2909

Dear Mr. Swanson:

Thank you for your letter concerning whether an entity created under a joint powers agreement may require a political subdivision not a party to the agreement to provide funding for rural street signs to be installed for emergency response purposes.

You advise that the North Dakota State Board of Higher Education and the University of North Dakota (collectively referred to as UND), the county of Grand Forks (County) and the city of Grand Forks (City) entered into a joint powers agreement (Agreement) in 1992 to provide an emergency 911 response service. The Agreement established the Grand Forks County 911 Authority (Authority) to operate a 911 dispatch center. The Authority consists of five members including representatives of the County, City and UND. The Authority has adopted a plan requiring the installation of street signs for roads in rural Grand Forks County to facilitate responses to emergencies. The plan requires that affected townships share in the cost of acquisition and installation of these signs. No townships are parties to the Agreement. You advise that while a vast majority of townships are cooperating by providing funding, at least two townships have refused to pay for street signs. You also indicate that the townships in question are all organized townships. You specifically ask whether the Authority may require the townships "affected and benefited" by these signs to pay for the acquisition and installation of the signs.

Under the Agreement the Authority has power to "exercise administrative oversight" of the operation of the 911 system subject "to the limits of the annual appropriations approved by [UND, the County and the City]." Agreement, para. VI(D). The Agreement

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provides for a cost allocation formula among UND, the County and the City. Agreement, para. XIII(A). There is no indication that townships will pay any part of the county allocation. Presumably, street signs will become capital assets owned by the parties in proportion to the budget cost share allocation at the time of purchase. Agreement, para. XII(B).

An entity created by or acting under a joint powers agreement may exercise only those powers belonging to the parties to the agreement. Therefore, for rural roads located outside the UND campus and the Grand Forks city limits, whether the Authority can install street signs and require townships to pay for those signs under the Agreement depends on whether the County has that authority under state law.

Counties, like other political subdivisions, are creatures of state law and possess only those powers that are expressly granted by statute or may be necessarily inferred from those expressly granted. N.D. Const. art. VII, § 2; County of Stutsman v. State Historical Society, 371 N.W.2d 321 (N.D. 1985). Each county has sole authority to "maintain and operate" roads included in its county road system. N.D.C.C. § 24-05-17. See also N.D.C.C. § 11-11-14(14) (public school bus routes). However, each board of township supervisors has general supervision over the roads, highways, and bridges in its township. N.D.C.C. § 24-06-01; 1983 N.D. Op. Att'y Gen. 91, 92. See generally 1993 N.D. Op. Att'y Gen. L-156. In addition, the director of the North Dakota Department of Transportation is responsible for maintaining the highways included in the state highway system. N.D.C.C. §§ 24-01-03, 24-03-02. Therefore, to the extent the installation of street signs on rural roads is based on the County's authority to maintain roads in the county, that authority is limited to roads included in the county road system or used as part of regularly scheduled public school bus routes. The County has no other statutory authority to install street signs on township roads or state highways. Also, although the County has the authority to install street signs on roads in a township that are included in the county road system or used as public school bus routes, the County has no authority to require townships to pay for street signs installed on those roads. See Letter from Attorney General Robert O. Wefald to Michael McIntee (May 29, 1984).

Other statutes may authorize organized townships to install street signs on rural roads in the township for emergency response purposes. See N.D.C.C. §§ 18-06-10 (contracts for prevention and extinguishment of fires), 58-06-01(15) (guideposts on highways in township as necessary for direction of travelers). However, the decision to

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install street signs under these statutes is left to the discretion of the board of township supervisors. These statutes do not require townships to install street signs or authorize counties to require payments from townships for the installation of those signs.

The statutory authority of a political subdivision can be expanded through joint powers agreements with other political subdivisions. However, the fact that a township may benefit from the installation of these signs is not sufficient authority to require payments from townships for those signs. It is my opinion that the Authority has no legal basis to require a township that is not a party to the Agreement to pay for the installation of street signs under the Authority's plan. A contract obligation binds identified parties to a contract if there is a mutual assent to its terms. N.D.C.C. §§ 9-01-02(2), 9-02-03, 9-03-01, 9-07-13; Lohse v. Atlantic Richfield Co., 389 N.W.2d 352, 355 (N.D. 1986); Cooke v. Blood Systems, Inc., 320 N.W.2d 124, 128 (N.D. 1982). Arguably, rural residents and townships are incidental beneficiaries of the plan to install rural street signs. However, "[t]he mere fact that one not a party to an agreement may be benefited by its performance does not bring him into contractual relations with the promisor in the agreement." Parlin v. Hall, 52 N.W. 405, 407 (N.D. 1892). A person only incidentally benefited under an agreement has no right to enforce the agreement for such benefit. Hellman v. Thiele, 413 N.W.2d 321, 325 (N.D. 1987); First Fed. S & L v. Compass Investments, 342 N.W.2d 214, 218 (N.D. 1983); N.D.C.C. § 9-02-04. By the same token it follows that an incidental beneficiary has no enforceable obligation to pay for any incidental benefit.

Because the parties to the Agreement have no authority to install street signs on rural township roads or require townships to pay for those signs, it is my opinion that obtaining funding from townships for rural street signs requires the consent or agreement of the townships. While some townships are willing to assume this financial obligation, they are doing so voluntarily. This obligation may not be imposed by the Authority under the Agreement to help fund the plan to install rural street signs.

Sincerely,

Heidi Heitkamp  
ATTORNEY GENERAL

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