

N.D.A.G. Letter to Rohrich (Nov. 7, 1988)

November 7, 1988

Mr. F. C. Rohrich
Emmons County State's Attorney
P.O. Box 657
Linton ND 58552

Dear Mr. Rohrich:

Thank you for your letter of September 20, 1988, concerning whether a local fire department, which receives rebates from insurance companies, is free to donate those rebates.

N.D.C.C. § 26.1-04-03(8) expressly prohibits insurance companies from providing insurance rebates. For this reason, my staff asked the Insurance Department to determine the source of the "rebates" referred to in your letter. The Insurance Department has informed this office that your local fire department is not receiving "rebates" as such from insurance companies but, rather, it is receiving distributions of insurance tax moneys authorized by N.D.C.C. ch. 18-04.

The Commissioner of Insurance collects the insurance premium tax pursuant to N.D.C.C. § 26.1-03-17. The tax is payable by the insurance company on or before March 1, following the year for which the tax is assessable, and must be deposited in the general fund in the state treasury. This tax premium is then disbursed to qualified fire departments pursuant to N.D.C.C. § 18-04-05.

Although N.D.C.C. ch. 18-04 does not specify what the fire departments may do with the money after receipt, the legislative history of that chapter indicates that the money is intended for the repair, maintenance, and upholding of existing programs. Hearing on S. 2104 before the Senate Committee on Political Subdivisions, 50th Leg., (statements of Senator Wogsland). Because the purpose of this money is to fund public fire departments, the money does constitute public funds and is subject to the restrictions placed on all public funds.

N.D. Const. X, § 18 provides, in relevant part, that "neither the state nor any political subdivision thereof shall . . . make donations to or in aid of any individual, association or corporation except for reasonable support of the poor" A donation of public funds from the fire department to the Senior Citizens Center would appear to violate this provision of the constitution.

I hope this information is helpful to you.

Sincerely,

Nicholas J. Spaeth

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