

Office of the Attorney General
State of North Dakota

Opinion No. 86-29

Date Issued: October 9, 1986

Requested by: Tom P. Slorby
Ward County State's Attorney

--QUESTION PRESENTED--

Whether a district board of health possesses exclusive authority in establishing the salaries of its employees where such salaries are within the limitations of the district's budget as approved by the board of county commissioners.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that a district board of health possesses exclusive authority in establishing the salaries of its employees where such salaries are within the limitations of the district's budget as approved by the board of county commissioners.

--ANALYSIS--

North Dakota law clearly delegates the establishment of salaries for district board of health employees to the district board of health. N.D.C.C. § 23-14-10 provides as follows:

23-14-10. SALARY AND COMPENSATION.--The salary of the district health officer shall be fixed by the district board of health. The district board of health shall determine the compensation of such technical and clerical help as may be allowed by the district board of health to the district health officer, and the district board of health also shall determine the amount of mileage to be paid for the necessary travel of the district health officer and his assistants, not to exceed the per diem and mileage rates established for state officers.

However, N.D.C.C. § 23-14-11 provides the method for county commission approval of the district board of health budget.

23-14-11. HEALTH FUND--HOW PROVIDED.--All salaries, mileage, compensation, and expenses provided for herein shall be paid as the salaries, mileage, compensation, and expenses of other county officers now are paid, out of a health district fund as follows:

1. The district board of health, as provided in this chapter, shall prepare a budget for the next fiscal year at the time at which

and in the manner in which a county budget is adopted and shall submit that budget to the board of county commissioners for approval. The amount budgeted and approved shall be prorated, in health districts composed of more than one county, among the various counties in the health district according to the assessed valuation of the respective counties comprising the health district, and shall, within ten days after approval by the board of county commissioners, be certified by the district health board to the respective county auditors of such counties, and shall be included in the levies of such counties. The amount called for in the budget shall not exceed the amount which can be raised by a levy of two and one-half mills on the taxable valuation, subject to public hearing in each county comprising the district at least fifteen days prior to action taken by the joint boards of county commissioners. Action taken by the joint boards of county commissioners shall be based on the record including comments received at the public hearing. Such levy shall not be subject to the limitation on the county tax levy for general and special county purposes, and the amount derived therefrom shall be placed in a special health fund. The health fund shall be deposited with and disbursed by the treasurer of the district board of health, and all counties comprising the health district shall remit and make settlements with such treasurer quarterly. Any funds remaining at the end of any fiscal year may be carried over to the next fiscal year.

Therefore, the district board of health's exclusive authority in establishing the salaries of its employees is limited by the budget approval authority bestowed upon the board of county commissioners.

N.D.C.C. § 23-14-03 indicates that the board of county commissioners, as used in N.D.C.C. § 23-14-11, shall mean the boards of county commissioners of several counties acting together in joint session in the case of a district comprising more than one county.

23-14-03. ORGANIZED BY WHAT OFFICERS.--Upon the adoption of the plain by a single county, or by two or more contiguous counties, as provided in section 23-14-01, the board of county commissioners of the county or counties concerned shall proceed to organize such district health unit by the appointment of a district board of health as hereinafter provided, and in all cases where two or more counties constitute one health district, the term board of county commissioners shall be taken to mean the boards of county commissioners of the several counties concerned acting together in joint session unless the context requires a different meaning. . . . (Emphasis added.)

The board of county commissioners, or the joint board in a district comprising more than one county, has the authority to

approve or disapprove the budget as submitted by the health district. Such authority includes the ability to modify budget items not referenced in N.D.C.C. § 23-14-01. This provides a method whereby the board of county commissioners can ensure that such budget does not exceed appropriate tax levies. If a budget is disapproved, the burden is on the district board of health to modify such budget until it is approved by the board of county commissioners or joint board of county commissioners. N.D.C.C. § 1-02-14 provides that the approved authority of a joint board of county commissioners rests with a majority of the counties comprising the joint board.

1-02-14. MAJORITY POWER.--Words giving a joint authority to three or more public officers or other persons shall be construed as giving such authority to a majority of them, unless it appears otherwise in the act giving the authority.

If any individual county participating in a multiple county health district finds the action of the joint board of county commissioners regarding that health district's budget unacceptable, its redress would be to review its participation in the health district.

--EFFECT--

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.

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Attorney General

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