

LETTER OPINION
93-L-175

June 3, 1993

Mr. Ted D. Seibel
Wells County State's Attorney
P.O. Box 347
Fessenden, ND 58438

Dear Mr. Seibel:

Thank you for your April 14, 1993, letter requesting an opinion regarding the authority of a rural fire protection district.

You indicate that a rural fire protection district is contemplating the erection of a fire hall which will be paid for from its mill levy. The United States Postal Service has inquired about the possibility of leasing space within the fire hall from the rural fire protection district once the fire hall is constructed.

You ask two questions:

1. Can a rural fire protection district use its tax levy to construct a fire hall that contemplates a portion of the hall to be leased?

2. If the answer to the first question is in the affirmative, can the rural fire protection district enter into a long-term lease with the U.S. Postal Service for the U.S. Postal Service's use of a portion of the fire hall?

The response to both questions depends on whether a rural fire protection district has authority to lease a building to another entity.

Political subdivisions, such as cities, counties, and rural fire protection districts, have only those powers expressly conferred upon them by the Legislature, or those necessarily implied from the

Mr. Ted D. Seibel
June 3, 1993
Page 2

powers expressly granted. See Parker Hotel Co. v. City of Grand Forks, 177 N.W.2d 764, 768 (N.D. 1970); Murphy v. Swanson, 198 N.W.116, 119 (N.D. 1924). Thus, it must be determined whether rural fire protection districts have statutory authority to lease a building to another entity.

The board of directors of a rural fire protection district has the power to "purchase or lease such firefighting equipment, ambulances, or other emergency vehicles, supplies, and other real or personal property as is necessary and proper to carry out the general fire protection program of the district." N.D.C.C. ? 18-10-06(6). This provision gives to rural fire protection districts the authority to lease property from other entities. It does not contemplate the leasing of rural fire protection district property to other entities.

Another section of state law gives authority to the governing bodies of counties, cities, or townships to lease its buildings to other entities. N.D.C.C. ? 48-08-06. This section, however, does not apply to rural fire protection districts.

Finally, a section of state law enables political subdivisions to "enter into any contract with the United States of America or with any agency thereof for the purchase or lease of any equipment, supplies, materials, or other property without regard to [certain] provisions of law." N.D.C.C. ? 21-06-08. This section contemplates a political subdivision's leasing of property from the United States of America or an agency thereof, and not the leasing of property to the United States of America or an agency thereof. Thus, it, too, does not apply in this case.

In conclusion, there are no state statutes which specifically authorize rural fire protection districts to lease any of their real property to other entities. However, whether that authority may be necessarily implied from the powers expressly granted fire protection districts may depend on the factual situation. There do not appear to be any powers

Mr. Ted D. Seibel
June 3, 1993
Page 3

expressly granted from which the authority to build and lease out buildings could be necessarily implied.

Therefore, it is my opinion that a rural fire protection district may not use its tax levy to construct a fire hall larger than is necessary for its needs in contemplation of leasing a portion of the hall to another entity.

However, if all of an existing building which the fire protection district owned was no longer required to meet the space requirements of the fire protection district, in my opinion the fire protection district would have necessarily implied authority to rent or lease the unused space to another entity. In that situation, a rural fire protection district could enter into a long-term lease with the U.S. Postal Service for the U.S. Postal Service's use of a portion of the building.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

las/krb

Mr. Ted D. Seibel
June 3, 1993
Page 4

Mr. Ted D. Seibel
Wells County State's Attorney
P.O. Box 347
Fessenden, ND 58438