

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 94-F-24

Date issued: August 5, 1994
Requested by: Wade G. Enget
Mountrail County State's Attorney

- QUESTION PRESENTED -

Whether a rural fire protection district organized under N.D.C.C. ch. 18-10 must provide services to land owned by the United States in trust for Indian tribes and individual Indians absent a contract with the United States.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that a rural fire protection district organized under N.D.C.C. ch. 18-10 is not obligated to provide services to land owned by the United States in trust for Indian tribes and individual Indians absent a contract with the United States.

- ANALYSIS -

N.D.C.C. ch. 18-10 governs the creation and operation of rural fire protection districts. The scheme of the chapter requires all landowners within a rural fire protection district to contribute to the costs of fire protection. Those with taxable land are subject to tax levies. N.D.C.C. ? 18-10-07. Charitable and nonprofit organizations are required to make payments in lieu of taxes. N.D.C.C. ? 18-10-07. Governments are to assist in paying for fire protection services:

Any rural fire protection district . . . may enter into a contract with any federal, state, or local government agency for fire protection service or fire protection cooperation, including ambulance or emergency vehicle services. . . . Federal, state, and local government agencies shall reimburse rural fire protection districts for fire protection services provided on real property owned by such agencies. Reimbursement must be on a reasonable annual fee based on the agency's acreage [hectarage] within the rural fire protection district, but in no

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event may such fee be an amount greater than if such property had been subject to property tax levies.

N.D.C.C. ? 18-10-10.

Given this scheme and the mandatory language in section 18-10-10 that governments "shall" reimburse rural fire protection districts, it is my opinion that the Legislature intended that government-owned land may receive fire protection only if governments contribute to the costs of the service. This interpretation is applicable to lands owned by the federal government in trust for a tribe or an individual Indian. Thus, it is my opinion that if the federal government declines to enter into a reimbursement contract with a rural fire protection district for fire protection services on trust lands, the rural fire protection district is not obligated to provide services to such lands.

My view that a rural fire protection district is not obligated to provide services to trust land not covered by a contract between the rural fire protection district and the United States is consistent with the legislative history regarding the addition of the last two sentences to N.D.C.C. ? 18-10-10.

Representative Orville Schindler stated that the legislation is to "make the [governmental] agency that owns the land responsible for fire control." Hearing on H. 1148 Before the House Comm. on Political Subdivisions 46th Leg. (January 4, 1979) (Statement of Rep. Schindler). Another proponent of the bill stated: "The rural firemen and the taxpayers feel that we cannot give fire protection on public lands without pay." Id. (Statement of M. Schindler, McClusky Rural Fire Protection District). "The legislative history surrounding the 1979 amendments to N.D.C.C. ? 18-10-10 indicates that the purpose of these two sentences was to address problems that had occurred where rural fire departments had responded to prairie fires on land owned by the state or federal government and did not receive adequate compensation for their services. The 1979 amendments required reimbursement from governmental entities for fire protection services. . . ." Letter from Attorney General Nicholas Spaeth to Dan Diemert, Dickey County State's Attorney (December 21, 1989).

This office, on a previous occasion, interpreted N.D.C.C. ? 18-10-10 as requiring a contract with the federal government before fire protection services must be rendered. In 1982 the United States Bureau of Reclamation asked whether "rural

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districts are required by state or local law to provide fire protection without compensation to all property owners within its district boundaries or jurisdiction." Letter from D. L. Krull to Assistant Attorney General DeNae Kautzmann (May 5, 1982). The response from this office referred to section 18-10-10 and stated:

[I]t appears that rural districts are not required by state law to provide fire protection without compensation to all property owners within their districts' boundaries. . . . If the property which lies within a particular rural fire protection district is not taxable, then the property owner must contract with the fire protection district in order to receive fire protection service.

Letter from Assistant Attorney General DeNae Kautzmann to D. L. Krull (May 28, 1982).

This position was also taken in a 1976 opinion addressing the responsibility of the Minot Rural Fire Association to provide services to the state fairgrounds. The statute under consideration was N.D.C.C. ? 18-10-15, which is similar to section 18-10-10. Like section 18-10-10, section 18-10-15 addresses tax-exempt land and indicates that certain tax-exempt organizations located within a rural fire district shall make payments in lieu of taxes. The 1976 opinion stated that "it perhaps could be argued that as section 18-10-15 states that the fee is 'for fire protection', and the fee has not been paid, the state fair association is not entitled to rural fire protection district services at the expense of the taxpayers and other supporters of the rural fire protection district." Letter from Assistant Attorney General John Adams to Gene Furman (November 22, 1976).

In conclusion, it is my opinion that a rural fire protection district is not obligated to provide services to land owned by the United States in trust for Indian tribes and individual Indians absent a contract with the United States providing for such services.

- 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

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question presented is decided by the courts.

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