



STATE OF NORTH DAKOTA
OFFICE OF ATTORNEY GENERAL

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Drew H. Wrigley
ATTORNEY GENERAL

LETTER OPINION
2026-L-02

Mr. Robert C. Fleming
Grafton City Attorney
Fleming, DuBois & Fleming, PLLP
208 W 2nd Ave S.
P.O. Box 633
Cavalier, ND 58220

Dear Mr. Fleming:

Thank you for your letter requesting my opinion regarding the funding of public safety answering points (PSAP). Specifically, you ask whether a county that operates a PSAP may require a city's residents to pay higher fees or taxes than other county residents in order to receive full dispatch services, including calls for law enforcement assistance made to the city's police department, from the PSAP. It is my opinion that a county operating a PSAP may not provide city residents with fewer services than other county residents or impose higher fees or taxes upon city residents than upon other county residents for the provision of standard PSAP services.

FACTS

A PSAP is defined as "a communications facility or combination of facilities which first receives 911 calls from persons in a 911 service area and which, as appropriate, may directly dispatch public safety services or extend, transfer, or relay 911 calls to appropriate public safety agencies."¹ The city of Grafton (Grafton) lies within the PSAP service area² of the Walsh County PSAP. Grafton is the county seat of Walsh County and accounts for approximately one-half (½) of the county's population. Grafton provided dispatch services for the entire county from 1974 to 1996. From 1996 until October of 2020, Walsh County provided dispatch services for the entire county.

Prior to October 2020, Grafton partially occupied a building which also housed the dispatch services. The city had agreed to pay one-third (1/3) of the costs of the building, and that amount covered a portion of the dispatch costs. During 2020, Grafton and Walsh County attempted to renegotiate the terms of this arrangement, but the parties were unable to reach an agreement. Grafton then vacated the building and discontinued the payments.

¹ N.D.C.C. § 57-40.6-01(14).

² N.D.C.C. § 57-40.6-01(15).

In October 2020, Walsh County informed Grafton that the Walsh County PSAP would dispatch 911 law enforcement responses for Grafton but would not handle any non-emergency calls for law enforcement assistance for the city. The request for this opinion also indicates that, although the PSAP will dispatch fire or emergency medical services, it provides different levels of 911 emergency services to residents depending on whether they reside within the city limits of Grafton or elsewhere in the county.³

ANALYSIS

The establishment and operation of emergency services communication systems is governed by North Dakota Century Code (N.D.C.C.) ch. 57-40.6. Under the law, either a county or a city, but not both, may impose a fee on all assessed communication services.⁴ “In any geographic area, only one political subdivision may impose the fee and imposition must be based on the subscriber service address.”⁵ The governing body of the political subdivision, acting through its designated governing committee “shall . . . [o]perate or contract for the operation of at least one [PSAP] to manage emergency services communications.”⁶

There are specific legal requirements for the operation of a PSAP.⁷ Among those requirements, a PSAP must “[h]ave the capability to dispatch public safety services to calls for service in the [PSAP]’s service area.”⁸ The PSAP must also “[h]ave two-way communication with *all* public safety services in the [PSAP]’s service area.”⁹ Public safety services include fire departments, law enforcement departments, emergency medical services operations, public safety telecommunicators, and associated first responders.¹⁰ As a result, a county operating a PSAP is mandated to provide two-way communication with all public safety services, including all law enforcement services, within its service area. State law clearly prohibits a political subdivision that operates a PSAP from

³ See Letter from Robert C. Fleming, Att’y at Law, Grafton City Att’y, Fleming, DuBois & Fleming, PLLP, to Off. of Att’y Gen. (Mar. 17, 2025), p. 1, ¶ 3.

⁴ N.D.C.C. § 57-40.6-02.

⁵ N.D.C.C. § 57-40.6-02(5).

⁶ N.D.C.C. § 57-40.6-10(1)(h).

⁷ N.D.C.C. § 57-40.6-10(4).

⁸ N.D.C.C. § 57-40.6-10(4)(c).

⁹ N.D.C.C. § 57-40.6-10(4)(d) (emphasis added).

¹⁰ N.D.C.C. § 57-40.6-01(10) (“‘First responder’ means an individual trained to provide assistance during an emergency, including a firefighter as defined under section 18-11-03, law enforcement officer as defined under section 12.1-01-04, emergency medical services personnel as defined under section 23-27-02, and public safety telecommunicators.”); N.D.C.C. § 57-40.6-01(16) (“‘Public safety services’ means personnel, equipment, and facilities used by *first responders* or other supporting services used in providing a public safety response to an incident.”) (emphasis added).

denying a connection to a city police department, provided the city is included in the PSAP service area.¹¹

Other provisions of N.D.C.C. ch. 57-40.6 support this conclusion and confirm it was the Legislative Assembly's intent. First, a county cannot charge a fee that varies depending on the location of the assessed communications services within the county; the fee for communications services "must be applied equally upon all assessed communications services."¹² When the legislature intended to create a narrow exception to that requirement, it created an explicit statute giving political subdivisions permission to charge additional fees under specified circumstances.¹³ There is no similar statutory exception for charging residents of a city within the PSAP service area more than other county residents in the service area. "The North Dakota Supreme Court has held that since counties are political subdivisions of the state, they possess only that power and authority which has been granted to them by statute."¹⁴ "In defining the power and authority of political subdivisions, any question as to their authority must be resolved against them."¹⁵ Because there is no statute which would permit counties to assess a different PSAP fee or provide a different level of PSAP services to residents residing within city limits as opposed to other residents of the county, doing so is impermissible.

Second, "only one political subdivision may impose the fee," precluding Grafton from assessing its own communications services fee from its residents.¹⁶ As this office has previously explained in the context of a county establishing services after a city was already doing so:

[I]f the city is already imposing an excise tax, the county may not also impose such a tax. If one or more cities already has an emergency service communications system in place when a county adopts a resolution regarding a county-wide emergency service communications system, the county resolution should apply only to the areas where no emergency service communications system currently exists. Because the measure should only affect areas without a current system, including imposition of the excise tax, only residents of areas where no service currently exists should be allowed to vote on the measure.¹⁷

¹¹ See N.D.C.C. § 57-40.6-10(4)(d). See also N.D.A.G. 2004-L-18 ("Because the assessments on telephone lines are imposed on all residents for maintaining governmental functions, and are not dependent on their consent, they are taxes, not fees.") (citations omitted).

¹² N.D.C.C. § 57-40.6-02(1).

¹³ Under narrow, specified circumstances, subscribers residing outside the political subdivision but within the telephone exchange access service boundary may vote to have the 911 services provided in exchange for the imposition of an additional fee. See N.D.C.C. § 57-40.6-02(6).

¹⁴ N.D.A.G. 81-11, citing *Zuger v. Boehm*, 164 N.W.2d 901 (N.D. 1969).

¹⁵ *Id.*, citing *Lang v. City of Cavalier*, 228 N.W. 819 (N.D. 1930).

¹⁶ N.D.C.C. § 57-40.6-02(5).

¹⁷ N.D.A.G. 95-L-63.

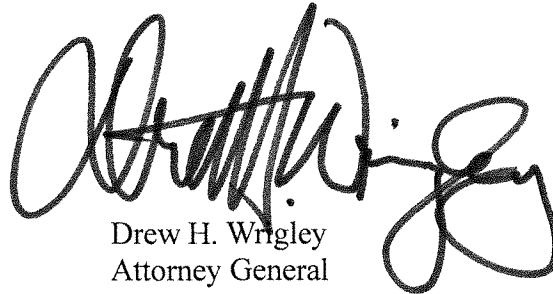
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If the city wished to operate a public safety answering service to supplement or provide an alternative to the county's PSAP services and to ensure Grafton residents can adequately connect with the city's public safety services, it could not charge a fee to do so. Permitting a county to impose the fee - but not provide full services - to city residents who could not otherwise provide those services for themselves, is an absurd result that was not intended by the language used by the Legislative Assembly.¹⁸

Because the statutory provisions are clear that all first responder services must be included in communications when a county operates a PSAP, and there is no authority for the county to charge city residents a higher or additional fee for the inclusion of city police departments in communication systems, it is my opinion that a county operating a PSAP must include all public safety services in emergency services communications in an equal manner and the county may not assess a higher or additional fee to city residents under N.D.C.C. § 57-40.6-02.

With regards,



Drew H. Wrigley
Attorney General

wdw/amh

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.¹⁹

¹⁸ *Blomdahl v. Blomdahl*, 2011 ND 78, ¶10, 796 N.W.2d 649 (“We construe statutes to avoid absurd or illogical results.”) (citations omitted).

¹⁹ See *State ex rel. Johnson v. Baker*, 21 N.W.2d 355 (N.D. 1946).