

LETTER OPINION
95-L-186

August 10, 1995

Mr. Fabian E. Noack
Foster County State's Attorney
PO Box 15
Carrington, ND 58421-0015

Dear Mr. Noack:

Thank you for your letter asking several questions regarding the Foster County Ambulance Service.

You first ask "whether Foster County or the Foster County Ambulance Service has the legal right to sell or transfer ownership of all of the Foster County ambulance vehicles and other assets." In response to your letter, my office contacted both your office and the Foster County Auditor and learned that the tax levied under N.D.C.C. § 57-15-50 was initiated by an action of the board of county commissioners and confirmed in a 1972 county special election. As a result, the Foster County Ambulance Service is an agent of Foster County under N.D.C.C. § 23-12-08 rather than an independent rural ambulance service district under N.D.C.C. chapter 11-28.3.

N.D.C.C. § 57-15-50 authorizes the board of county commissioners to levy a tax "for the purpose of subsidizing county ambulance services." N.D.C.C. § 23-12-08 authorizes counties to provide these services:

Any county or municipality of the state of North Dakota, by itself, or in combination with any other county or municipality of the state of North Dakota, may, acting through its governing body, establish, maintain, contract for, or otherwise provide ambulance service for such county or municipality; and for this purpose, out of any funds of such county or municipality not otherwise committed, may buy, rent, lease, or otherwise contract for all such vehicles, equipment, or other facilities or services which may be necessary to effectuate such purpose.

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Pursuant to this authority, it is my opinion that Foster County could purchase and sell assets necessary to provide county ambulance services. However, while this section authorizes a county to establish a county ambulance service, that service would have only the powers given to it by the county. Therefore, the Foster County Ambulance Service could purchase or sell these assets only if authorized by the county, and such purchase or sale would be on behalf of the county.

You next ask whether these assets may be transferred, at less than market value, to a private ambulance service. Article X, Section 18 of the North Dakota Constitution provides:

The state, any county or city may make internal improvements and may engage in any industry, enterprise or business, not prohibited by article XX of the constitution, but neither the state nor any political subdivision thereof shall otherwise loan or give its credit or make donations to or in aid of any individual, association or corporation except for reasonable support of the poor, nor subscribe to or become the owner of capital stock in any association or corporation.

By adopting N.D.C.C. § 23-12-08, the Legislature has acknowledged that providing county ambulance services is a permissible enterprise in which counties may engage. However, even when a county is engaged in an authorized enterprise, expenditures of county funds still must further a public purpose. Green v. Frazier, 176 N.W. 11 (N.D. 1920), aff'd 253 U.S. 233; 1993 N.D. Op. Att'y Gen. 4.

"A public purpose or public business has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity, and contentment of all the inhabitants or residents within a given political division . . ." Gripentrog v. City of Wahpeton, 126 N.W.2d 230, 237 (N.D. 1964) (emphasis added) (quoting Green v. Frazier, 176 N.W.11 (N.D. 1920)). Thus, Foster County may not simply donate its ambulance or other related assets to a private entity, but may transfer those assets for less than market value on the condition that the assets or their proceeds be used to promote the general welfare of all the inhabitants of Foster County. By providing that a county can enter into a contract for county ambulance services, N.D.C.C. § 23-12-08 authorizes an exchange of county assets for county ambulance services provided by private entities. Therefore, it is my opinion that Foster County can contract with one or more

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private entities to transfer county ambulance service assets for less than market value in exchange for an agreement to use those assets for the public purpose of providing ambulance services to all the inhabitants of Foster County.

You also ask whether Foster County can continue to levy the tax authorized by N.D.C.C. § 57-15-50 if the assets used by the Foster County Ambulance Service are sold or otherwise transferred. A county may use the proceeds of a tax levied under that section only for "subsidizing county ambulance services." However, a county can provide county ambulance services either by itself or through a contract with one or more private entities. N.D.C.C. § 23-12-08. Therefore, it is my opinion that Foster County could stop providing ambulance services on its own and instead use the proceeds of the tax authorized in N.D.C.C. § 57-15-50 to pay for county ambulance services provided under a contract between the county and one or more private ambulance services.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

jcf/vkk