

Memorandum

TO: Ray Lambert, Fire Marshal

FROM: Jonathan Byers, Assistant Attorney General

RE: Rural Fire Protection Districts

DATE: July 8th, 2014

Questions Presented

You have been asked to brief the Advisory Commission on Intergovernmental Relations on a number of questions related to rural fire protection districts. I understand the questions to be:

- How does a territory become part of a RFPD?
- How can a territory be withdrawn from a RFPD?
- Are there areas of North Dakota that are not part of a RFPR?
 - Who responds to fire calls in those areas?
- How are RFPD's property tax levies determined?
- What funding other than property taxes are available to a RFPD?

Legal Authority

N.D.C.C. Chapter 18-10	Rural Fire Protection Districts
N.D.C.C. Chapter 18-04	Distribution of Insurance Tax to Fire Departments
N.D.C.C. § 18-06-10	Township may contract for prevention and extinguishment of fires
N.D.C.C. § 18-06-10	Contracts for fire protection in unorganized townships—Mill levy

Discussion

1) How does a territory become part of a RFPD?

Whenever sixty percent of the freeholders residing in any rural territory, equivalent in area to one township or more, elects to form organize, establish, equip, and maintain a rural fire protection district, they file with the county auditor a petition setting forth their intentions, including the names & addresses of the petitioners and the name, area in square miles, and description of the boundaries of the proposed district. See N.D.C.C. § 18-10-01.

Upon the filing of the petition, the county auditor determines and certifies the petition has been signed by at least sixty percent of the freeholders whose names appear on current tax schedules and who appear to reside within the boundaries of the proposed district. The county auditor then designates a time and place for the petition to be heard by the county commissioners, and publishes notice of that meeting. (If the proposed district is situated within two or more counties, the notice is for a joint meeting by all of the boards of county commissioners involved). At the meeting, the commissioners determine whether the district is suited to the general fire protection policy of the county and determine the boundaries of the proposed district. Those determinations are set forth in a written order which is filed with the county auditor. See N.D.C.C. § 18-10-02

Following the filing of the order by the county commissioners, the auditor publishes notice of an organizational meeting for the new district. N.D.C.C. § 18-10-03. At the meeting, the owners of any real or person property assessed for taxation in the district elect 5-7 RFPD directors. See N.D.C.C. § 18-10-04.

Territory which is adjacent to the boundary of an existing RFPD may be annexed into a RFPD in much the same fashion as a RFPD is created. A petition signed by 60% of the qualified electors is filed, verified by the auditor, and forwarded to the RFPD directors, who prepare a report approving or disapproving the proposal, whole or in part. If it is disapproved, the petition is rejected. If it is approved, in whole or in part, it is heard and determined by the county commissioners at a meeting with proper notice. See N.D.C.C. § 18-10-11.

2) How can a territory be withdrawn from a RFPD?

Any person having an ownership interest in property subject to a mill levy for the RFPD who wishes to withdraw from the RFPD may do so under the following conditions:

- The territory to be withdrawn must border on the outer boundary of the district.
- The territory to be withdrawn remains responsible for the payment of the proportion of obligations outstanding at the time of the petition for withdrawal.
- Mill levies remain in effect until proportionate share is paid.
- The proceedings for withdrawal must be initiated by the filing of a petition signed by fee title holders of sixty percent of the surface acreage in the territory sought to be withdrawn.
- The county auditor verifies from the tax schedules whether the petition contains the required signatures.
- The county auditor determines and certifies to the RFPD directors the percentage proportions of the taxable valuation of the territory petitioned to be withdrawn to the taxable valuation of all property in the district.
- Within twenty days after receipt of the petition, verification, and computation of respective percentage proportions, the RFPD directors attach to the

petition a statement of outstanding obligations of the district and forward the petition to the county commissioners.

- At a regular meeting, the board of county commissioners computes the indebtedness proportionally assignable to the territory to be withdrawn. The commissioners enter a written order describing the boundaries of the territory withdrawn and the indebtedness of the district assigned to the territory, which is subject to continued levy.

See N.D.C.C. § 18-10-12.1.

3) Are there areas of North Dakota that are not part of a RFPD? Who responds to fire calls in those areas?

Ray, I will leave the details of the RFPD coverage in North Dakota to you. I do note a couple of sections that allow townships and unorganized townships to contract for fire prevention and extinguishment of fires. I simply recite their language here:

18-06-10. Township may contract for prevention and extinguishment of fires.

The electors of each township at the annual township meeting may authorize and empower the board of township supervisors to levy, not exceeding the limitation in subsection 1 of section 57-15-20.2, and provide by contract or otherwise for the prevention of, protection from, and extinguishment of fires within the townships in such manner as the board of supervisors deems advisable.

When so authorized, the supervisors may enter into a five-year contract and levy, not exceeding the limitation in subsection 1 of section 57-15-20.2, for the payment of the services obtained under such contract. Such contract may be renewed or renegotiated for another five-year period upon authorization by the electors of the township at the annual meeting.

18-06-11. Contracts for fire protection in unorganized townships – Mill levy.

Upon the petition of a majority of the qualified electors in one or more unorganized townships or in school districts comprising unorganized townships, the board of county commissioners has authority to execute contracts with any incorporated municipality, rural fire protection districts, or rural fire departments of this or adjacent states to provide for the prevention of, the protection from, and the extinguishment of fires within such unorganized townships or districts in such manner as may be agreed upon by the board of county commissioners and the governing body of the municipality contracting to perform such services.

The board of county commissioners is further authorized to levy a sum sufficient for the reimbursement of municipalities performing such services upon all taxable property within the unorganized townships or school district comprising unorganized townships for which such fire protection service is provided. The mill levy provided herein is over and above any mill levy limitation provided by law and must be collected and paid as other county taxes are collected and paid. The proceeds of such tax must be placed by the county treasurer in a special fund for the reimbursement of the municipality providing fire protection service to the unorganized townships or districts from which the tax is collected and must be disbursed upon the order of the board of county commissioners.

4) How are RFPD's property taxes determined?

The RFPD directors determine a general fire protection policy for the district and annually estimate the probable expense for carrying out the contemplated program. The expense is certified by the RFPD president and secretary to the county auditor on or before June 30th of each year. The auditor levies a tax upon the taxable property in the district in an amount not exceeding the limitation in N.D.C.C. § 57-15-26.3. The tax must be:

- Collected as other taxes are collected in the county
- Turned over to the secretary-treasurer of the RFPD
- Deposited in a state or national bank to the credit of the RFPD
- Paid out upon warrants drawn upon by the fund by authority of the RFPD directors, bearing the signature of the secretary-treasurer and countersigned by the president.

The amount of tax levy may not exceed the amount of funds required to defray the expenses of the district for a period of one year as embraced in the annual estimate of expense, including the amount of principal and interest upon the indebtedness of the district for the ensuing year and including any amount determined by the board of directors to be necessary to be carried over to a future year for purchase of firefighting equipment, ambulances, or other emergency vehicles. See N.D.C.C. § 18-10-07.

5) What funding other than property taxes are available to a RFPD?

In addition to tax levies, RFPD's may receive donations, contributions, bequests, or annuities. See N.D.C.C. § 18-10-09. Any rural fire protection district may enter into a contract with any federal, state, or local government for fire protection services or fire protection cooperation. RFPD's are reimbursed for such services by a "reasonable annual fee" based on the agency's acreage within the fire protection district, but in no event may the fee be greater than if the property had been subject to property tax levies. See N.D.C.C. § 18-10-10.

Any club, lodge, chapter, or charitable home, dormitory, state or county fair association, or like organization located within a RFPD and outside the boundaries of any city pays to the RFPD directors an amount to be agreed upon, but not less than 25% of the amount which would be levied against the property if it were subject to tax levy. See N.D.C.C. § 18-10-15.

Certain RFPD's are eligible for participation in the fund created from premium taxes on fire insurance companies. To be eligible, the RFPD must have been in existence for at least eight months, must meet the requirements of class 9 protection or better, and must be in compliance with the requirements to report fires to the state fire marshal. If a RFPD meets these requirements, it files a certificate with the state fire marshal and insurance commissioner by October 31st of each year. The RFPD files a report with the state fire marshal detailing the expenditure of the funds and its committed and uncommitted reserve balances. See N.D.C.C. § 18-04-01, § 18-04-02.

Fire Protection Districts

Mr. Chairman,

I am here to provide information to questions, I understand, this commission has dealing with ND Fire Departments.

First, I do not consider myself an expert on fire protection districts as my office or myself has little involvement on how a territory becomes part of or withdraws from a Rural Fire Protection District. We have even less interaction with the day to day activity of ND Fire Departments.

What has been provided you in a memorandum is the NDCC chapter that provides guidance on questions you presented.

There are areas of the state that are not part of or covered by a Rural Fire Protection District. Some examples are the following:

- national grasslands, mostly in Western ND
- some areas along Lake Sakakawea and the Missouri River
- lands around and to include Mandaree
- some land west of Garrison that includes Whiteshield

- a large portion of Sioux County including communities not covered by any fire department

My answer as to who responds to fire calls in the above areas varies. The State Forest Service responds to grass or forest land fire calls. The Federal Wildland Firefighters respond to grassland and forest fire calls not covered by the State Forest Service. Both the Federal and State Wildland Firefighters are not permitted to respond to structure fires.

In some cases neighboring firefighters will respond to fire calls outside of their district. In other cases no one responds to the fire calls, and the fire is left to burn to self-extinguishment.

Many sources of funding are available to fire districts other than tax levies. Examples are fundraising, requests for donations, free will offering meals, grants, and charitable gaming to list a few.

Raymond Lambert

State Fire Marshal

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