

LETTER OPINION
99-L-33

April 7, 1999

Ms. Linda Hickman
Williams County State's Attorney
PO Box 2047
Williston, ND 58802-2047

Dear Ms. Hickman:

Thank you for your letter asking for my opinion on whether a Williams County dog ordinance creates civil or criminal liability, and what steps the county must take to enforce that ordinance. I understand Williams County is not a home rule county; therefore, the discussion in this opinion will be limited to non-home rule counties.

Section 5 of the Williams County dog ordinance subjects the owner or possessor of any dog found to be running at large to "an assessed fee not to exceed \$250 for each separate violation." The Williams County dog ordinance was enacted pursuant to N.D.C.C. § 11-11-14(22), which simply states a board of county commissioners may "regulate or prohibit the running at large of animals." The statute does not address whether the board may make it a crime to allow a dog to run at large. N.D.C.C. § 11-11-14(22).

"Counties are creatures of the North Dakota Constitution and may act only in the manner and on the matters prescribed by the Legislature in statutes enacted pursuant to constitutional authority. As a political subdivision of the State, its rights and powers are determined and defined by law." McKenzie County v. Hodel, 467 N.W.2d 701, 707-08 (N.D. 1991) (VandeWalle, J., concurring) (citations omitted). In applying a similar proposition to a city, the Supreme Court stated:

A municipal corporation is an agency of the state. It is purely a creature of statute. It takes its powers from the statutes which give it life, and has none which are not either expressly or impliedly conferred thereby or essential to effectuate the purposes of its creation. In defining its powers, the rule of strict construction applies, and any doubt as to their existence or extent must be resolved against the corporation.

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Lang v. City of Cavalier, 228 N.W. 819, 822 (N.D. 1930) (citations omitted). Thus, in reviewing N.D.C.C. § 11-11-14(22), one must use the rule of strict construction to determine whether the board is authorized to make a crime of allowing a dog to run at large.

N.D.C.C. § 11-11-14(22) clearly gives the board of county commissioners the authority "[t]o regulate or prohibit the running at large of animals." However, the extent of that power, and whether that power includes the ability to make a violation of such regulation or prohibition a crime, is questionable. Because of the onerous nature of a criminal violation and conviction, one would expect the Legislature to provide specific authority for counties to enact criminal ordinances. Cf. N.D.C.C. § 40-05-06 (limiting the amount of fines and imprisonment for violation of a city ordinance, resolution, or regulation). Since the statute does not give counties the specific authority to enact a criminal ordinance regarding animals running at large, the rule of strict construction dictates that such authority does not exist.

This conclusion is supported by the fact that state law does not give counties even the general authority to enact criminal ordinances. In 1984, this office determined that "[n]either the State Constitution nor State statutes grant to the counties the authority to enact an ordinance defining a crime and providing for the criminal punishment for a violation thereof." 1984 N.D. Op. Att'y Gen. 37. A review of state law reveals that no such general authority has been enacted since that opinion. Accordingly, there is no general authority for a county to enact an ordinance defining a crime and providing for a criminal punishment for committing that crime.

In contrast, when the Legislature has intended a violation of a county ordinance to constitute a crime, it has specifically stated so. In N.D.C.C. § 11-28-09, the Legislature made a violation of a rule or regulation of a board of county park commissioners an infraction. Likewise, in N.D.C.C. § 11-33-21, the Legislature made a violation of a county zoning ordinance a class B misdemeanor. Thus, the Legislature itself has made the violation of certain county ordinances crimes, but has not given counties the authority to define crimes themselves.

Since there is neither general nor specific statutory authority for a county to enact a criminal ordinance regarding the running at large of dogs, it is my opinion that the Williams County dog ordinance could not create criminal liability for allowing a dog to run at large. Thus, by necessity, the ordinance must be a civil ordinance creating civil liability for allowing a dog to run at large. The

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actual amount of the assessed fee and the manner in which it would be enforced would require further action by the board of county commissioners. At the direction of the board of county commissioners, the civil liability could be enforced by the state's attorney in a civil proceeding as a claim by the county against the violator of the ordinance. Any monies collected pursuant to the ordinance must be remitted to the county treasury. See N.D.C.C. §§ 11-10-17 and 11-14-06. Since these monies are not dedicated for any particular purpose, it would be appropriate to deposit them in the county general fund.

Sincerely,

Heidi Heitkamp
Attorney General

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