

LETTER OPINION
99-L-22

February 16, 1999

Ms. Kathleen Trosen
119½ 9th St W
Harvey, ND 58341

Dear Ms. Trosen:

Thank you for your letter asking several questions concerning a contract for the provision of legal services for matters transferred from city court to district court under N.D.C.C. § 40-18-15.1.

Generally, a city does not have authority to hold a jury trial in municipal court. A city with a home rule charter, however, may provide for municipal court jury trials by exercising its authority under N.D.C.C. § 40-05.1-06(5), if that power is included in the city's home rule charter and if the city passes ordinances to implement that power. 1996 N.D. Op. Att'y Gen. 32. Although Harvey is a home rule city, the ordinances which you attached to your letter do not provide for a jury trial in city courts. Therefore, general state laws concerning municipal courts will apply to the City of Harvey.

N.D.C.C. § 40-18-15.1 addresses the transfer of certain city cases to district court for trial after the defendant has requested the transfer in order to obtain a jury trial. A case transferred by operation of N.D.C.C. §§ 40-18-15 and 40-18-15.1 from municipal court to district court becomes a district court case and is no longer a municipal court case, even though municipal ordinances are applied. See 1994 N.D. Op. Att'y Gen. L-168 (June 17 letter to Solberg), 1987 N.D. Op. Att'y Gen. 42.

Your questions concern the parties to various contracts which are possible under N.D.C.C. § 40-18-15.1 and the terms which are necessary parts of those contracts. To answer your questions, the provisions of N.D.C.C. § 40-18-15.1 concerning a transfer of municipal court cases to district court for jury trial need to be examined in detail. That section provides:

A matter may be transferred to district court for trial only if within twenty-eight days after arraignment the defendant has requested in writing to transfer the case to district court and to exercise the defendant's right to a jury trial. The city shall provide a prosecuting attorney and, in the case of any indigent defendant, a defense attorney. The city may contract with the county, state, or any individual or entity for prosecution or defense services. In the contract, the city, county, and state may agree to a division of all fees, fines, costs, forfeitures, and any other monetary consideration collected from cases transferred under this section, which must be paid to the city and county treasury and state general fund at least once each quarter. At the time of payment, the clerk of district court shall account under oath to the city auditor, county, and state treasurer for all money collected. In the contract the city, county, and state may also agree to a division of expenses, including jury and witness expenses, related to cases transferred under this section. In the absence of a contract all fees, fines, costs, forfeitures, and any other monetary consideration collected from transferred cases must be deposited in the state general fund.

This provision was intended to allow a county to recoup some of the additional expense incurred by providing a jury trial for a violation of a municipal ordinance. 1987 N.D. Op. Att'y Gen. 42.

N.D.C.C. § 40-18-15.1 addresses several practical concerns when transferring cases from municipal court to district court. Because it is a city case and city ordinances are being vindicated, it is the city's responsibility to provide a prosecuting attorney and, in appropriate instances, a defense attorney. In order to provide for these services, the city may contract with the county, state, or any individual or entity. The next sentence creates some grammatical confusion. That sentence states:

In the contract, the city, county, and state, may agree to a division of all fees, fines, costs, forfeitures, and any other monetary consideration collected from cases transferred under this section, which must be paid to the city and county treasury in state general fund at least once each quarter.

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The opening words, "In the contract," imply a reference to the contract from the preceding sentence between the city and the county, state, or any individual or entity for prosecution or defense services yet the body of the sentence refers only to the city, county, and state. The meaning of this sentence may be enhanced by examining the original law. Northern X-Ray Co., Inc. v. State, 542 N.W.2d 733, 736 (N.D. 1996).

This sentence was modified by the Legislature in 1989. 1989 N.D. Sess. Laws ch. 490. Previously, it would have read:

If the city and the county do not otherwise agree by resolutions of the respective governing bodies, the city is entitled to 65 percent and the county is entitled to 35 percent of all fees, fines, costs, forfeitures, and any other monetary consideration collected from cases transferred under this section.

See Id. This sentence is intended to allow for negotiated cost shifting between a city, county, and the state when a municipal case is transferred to district court. In order for a contract to be effective, the parties bound by the contract must agree to its terms. N.D.C.C. § 9-01-02. Therefore, the phrase "in the contract" must refer to a contract involving the city, county, or state, and would not refer to a contract between the city and a private individual or entity if the county or state were not also parties to that contract.

You also asked what the disposition of expenses and money received from cases transferred from municipal court to district court is in the absence of a contract between the city and the county or state. As noted previously, N.D.C.C. § 40-18-15.1 formerly provided for a 65 percent share to the city and a 35 percent share to the county in the absence of a different agreement. During the 1989 Legislative Session, this was changed to remove the default provisions, apparently because the default provisions eliminated any desire for negotiation on the part of whoever was favored by the default. Hearing on S.B. 2442 Before the House Committee on Political Subdivisions, 51st N.D. Leg. (March 9, 1989) (comments of Mark Johnson and Representative Shaft).

However, N.D.C.C. § 40-18-15.1 was also amended in 1995. Among other changes the amendment added the last sentence:

In the absence of a contract, all fees, fines, costs, forfeitures, and any other monetary consideration

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collected from transferred cases must be deposited in the general fund.

See 1995 N.D. Sess. Laws ch. 389. These changes were requested because cities and counties often were not negotiating contracts under N.D.C.C. § 40-18-15.1 despite the changes made in 1989. Hearing on S.B. 2115 Before the Senate Judiciary Committee, 54th N.D. Leg. (January 9, 1995) (comments of Senator Wayne Stenehjem and Jim Gange); Hearing on S.B. 2115 Before the House Appropriations Committee, 54th N.D. Leg (March 13, 1995) (Statement of Jim Gange). Now, all reserves go to the state general fund if the parties do not come to an agreement, which creates an incentive for cities and counties to negotiate. Hearing on S.B. 2115 before the Conference Committee, 54th N.D. Leg. (March 31, 1995) (Statement of Senator Wayne Stenehjem).

Sincerely,

Heidi Heitkamp
Attorney General

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