

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 2000-F-14

Date issued: July 14, 2000

Requested by: Murray Sagsveen, State Health Officer

- QUESTION PRESENTED -

Whether the jurisdiction of a county or multi-county health district formed under repealed N.D.C.C. ch. 23-14 includes cities within the county or counties composing the district pursuant to former N.D.C.C. § 23-14-01.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that the jurisdiction of a county or multi-county health district formed under repealed N.D.C.C. ch. 23-14 includes cities within the county or counties composing the district unless a city having a population in excess of 15,000 chooses not to join the health district under the conditions specified in that statute.

- ANALYSIS -

Laws governing the administration of local public health units were substantially modified during the most recent legislative session. 1999 N.D. Sess. Laws ch. 242. These statutes are codified at N.D.C.C. ch. 23-35. A new requirement was added that all land in the state must be joined to a public health unit before January 1, 2001. N.D.C.C. § 23-35-02. A public health unit is defined to include city and county boards of health and health districts. N.D.C.C. § 23-35-01(8). Therefore, all cities in North Dakota must either form a public health unit for the city alone or join a county or multi county public health district before January 1, 2001.

The statutory revisions concerning public health units enacted under 1999 N.D. Sess. Laws ch. 242 became effective August 1, 1999. North Dakota Constitution, Article IV, § 13, N.D.C.C. § 1-02-42. Former laws regarding local public health administration were repealed effective the same date, including ch. 23-14. 1999 N.D. Sess. Laws ch. 242, § 7. N.D.C.C. § 23-14-01 is one of these laws repealed. Id. This statute addressed the formation of health districts, and provided:

When in the opinion of the state health officer, on information obtained in cooperation with local health officers and local boards of health, the health needs of any given area may be better served by the formation of a health district, as hereinafter provided, the state health officer shall so notify the county auditor of each county involved and the city auditor of each city having a population in excess of fifteen thousand persons. Each county auditor and city auditor shall place the matter before the governing board of the county or city at its next regular meeting, and the governing board by resolution either shall adopt or reject the plan at the same or the first subsequent meeting. If resolutions are adopted by the governing boards of the cities and counties as hereinbefore provided, adopting the health district plan, all laws and parts of laws in conflict therewith automatically become inoperative throughout the territory embraced within the district, and particularly the laws relative to city, township, and county boards of health. If the board of county commissioners of any county or the city council or city commission of any city, rejects the plan, it may submit the question of adoption of the provisions of this chapter to the qualified electors of the county or city at the next ensuing general or special election to be held in said county or city. In all elections held under this chapter, the votes cast in the cities having a population in excess of fifteen thousand inhabitants must be considered separate and apart from the votes cast elsewhere in the county, and the participation in the health district by any city must be governed by the votes cast in the city as distinguished from the vote cast elsewhere in the county. If a majority of the qualified electors vote in favor of the adoption of the provisions of this chapter, the board of county commissioners, within ten days after the canvass of said election, shall adopt such resolution, and, upon the adoption of such resolution such county or counties, together with the cities voting in favor of the plan, must be considered a district health unit or health district. On a petition filed with the county auditor containing names of qualified electors of the county equal to ten percent of the votes cast for the office of governor at the last general election, an election on the question of forming a health district must be held as heretofore provided. The health districts must follow county lines, and in case the district as outlined by the state health officer includes more than one county, and the plan is adopted in any of said counties or cities, and rejected in any one or more of the counties or cities, it becomes

effective in the county or counties and city or cities adopting the plan, if in the exercise of his discretion the state health officer deems the same operative.

N.D.C.C. § 23-14-01. When interpreting this statute, it must be construed as a whole to determine the Legislature's intent; each provision must be harmonized with the others to give force and effect to each if possible; and each word, phrase, clause, and sentence must be given meaning. Matter of Estate of Opatz, 554 N.W.2d 813, 815 (N.D. 1996). Although N.D.C.C. § 23-14-01 contains many steps governing the formation of health districts, and many of these steps appear to apply to all cities, the limitation of the application of these steps to cities of over 15,000 people is implied at each step.

The first sentence in N.D.C.C. § 23-14-01 provides for notice to the county auditor of each county and to the city auditor of each city having a population in excess of 15,000 if the state health officer believes that a health district should be formed. The second sentence provides that the county and city auditors are to place the matter before their respective governing boards, which shall either adopt or reject the plan. While the second sentence is not limited to cities having a population in excess of 15,000 persons, that limitation would logically be implied by virtue of the fact that only city auditors of cities having a population in excess of 15,000 persons are notified regarding this matter.

The links between each step in this process imply that a city must have a population in excess of 15,000 in order to remove itself from the rest of the county when a county or multi-county health district is being established. The third sentence notes that once the governing boards of the cities and counties involved adopt resolutions approving of the health district, then the health district is formed. This can only apply to cities with a population in excess of 15,000 because these are the only cities having the matter before their governing bodies. The fourth sentence provides that if the county commissioners or the city council or the city commission of any city rejects the plan, the governing body may submit the question concerning adoption of a health district to the electors of the county or city at the next election. Subsequent sentences address the election, and the election for cities is specifically limited to cities having a population in excess of 15,000 inhabitants. Again, all these provisions are related, and a population requirement of more than 15,000 inhabitants is implied at each step.

It is a question of fact whether a particular city met the population threshold required to opt out of a health district which includes the county in which the city is located. It is also a question of fact whether the city governing body adopted or rejected a resolution

concerning any proposed health district, whether the governing body decided to submit the proposal to the city voters, and what the outcome of such an election was. In a recent opinion addressing jurisdiction to abate a nuisance in a city, I correctly stated the law concerning the ability of certain cities to choose not to join a health district, but I relied on the statement of fact in the letter requesting my opinion that the city involved had "never joined the health district" nor contracted for services. 2000 N.D. Op. Att'y Gen. L-52 (Apr. 4 letter to John Gregg). It came to my attention, after the opinion was issued, that the city involved in that opinion has never met the population threshold to opt out of a health district. That opinion is hereby modified to reflect that the multi-county health district does have jurisdiction in the city involved. However, the remedies for alleged nuisances which were described in that opinion are still available.

Therefore it is my opinion that under N.D.C.C. § 23-14-01, repealed effective August 1, 1999, only a city with a population in excess of 15,000 inhabitants could separately determine not to join a health district formed under that section by the county containing the city. Further, a city of 15,000 or less inhabitants may not have chosen to separate from a health district formed by or joined by the county government under N.D.C.C. § 23-14-01.

- EFFECT -

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.

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