

LETTER OPINION
2004-L-34

May 21, 2004

Mr. Scott T. Solem
Beulah City Attorney
133 W Main St
PO Box 249
Beulah, ND 58523-0249

Dear Mr. Solem:

Thank you for your letter asking whether the City of Beulah may enforce its abandoned motor vehicle ordinance outside the city's municipal limits pursuant to N.D.C.C. § 40-06-01(2). It is my opinion that Beulah may enforce its abandoned motor vehicle ordinance to the distance of one-half mile beyond the city limits under N.D.C.C. § 40-06-01(2). You also asked whether Mercer County may enforce its zoning ordinance concerning abandoned automobiles within the same area. It is my opinion that Mercer County may not enforce its zoning ordinances within one-half mile of the Beulah city limits.

ANALYSIS

North Dakota cities have jurisdiction "in and over all places within one-half mile of the municipal limits for the purpose of enforcing health and quarantine ordinances and regulations and police regulations and ordinances adopted to promote the peace, order, safety, and general welfare of the municipality," except as otherwise provided by law. N.D.C.C. § 40-06-01(2).¹ This office has consistently held that cities have jurisdiction to enforce municipal ordinances within one-half mile outside of the city limits. N.D.A.G. 99-L-98, N.D.A.G. 98-F-18 (discussing difference between one-half mile limit to city ordinances and extra territorial zoning authority in relation to fire prevention code), 97-F-10 (discussing extra territorial jurisdiction for ordinance enforcement as it relates to a county's authority to license alcoholic beverage retailers), N.D.A.G. 86-22, N.D.A.G. Letter to Ramsey (July 16, 1991), N.D.A.G. Letter to Murphy (June 12, 1985), and N.D.A.G. Letter to Halpern (Dec. 7, 1977) (discussing jurisdiction of municipal judge).

¹ City police officers are authorized to perform the duties and exercise the powers of peace officers within the city limits and for a distance of one and one-half miles outside the city limits, and may continue further if in hot pursuit of an individual attempting to avoid arrest. N.D.C.C. § 40-20-05(1) and (2).

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You supplied a copy of Beulah's Ordinance No. 368, which addresses abandoned personal property and abandoned motor vehicles. The ordinance contains provisions allowing for civil enforcement as a nuisance and also allowing for criminal enforcement.² Although this office generally does not interpret municipal ordinances,³ a plain reading of Beulah Ordinance No. 368 reveals that it was enacted for the purposes stated in N.D.C.C. § 40-06-01(2). See generally, City of Jamestown v. Tahrán, 657 N.W.2d, 235, 237 (N.D. 2003). Therefore, it is my opinion the city may enforce its abandoned vehicle ordinances within one-half mile of the city limits.

You also asked about the jurisdiction of Mercer County concerning its abandoned automobile ordinance. Mercer County has adopted zoning regulations which address abandoned automobiles pursuant to the county's zoning authority under N.D.C.C. ch. 11-33. A county's zoning authority does not affect any property, real or personal, located within the zoning and subdivision⁴ authority of a city unless the city has passed a resolution relinquishing its authority to enact zoning regulations to the county. N.D.C.C. § 11-33-20. Beulah's maximum possible extraterritorial zoning authority extends to one mile beyond the corporate limits of the city. N.D.C.C. §40-47-01.1(1)(a). However, Beulah has only extended its extraterritorial zoning and subdivision authority "to all unincorporated territory located within one-half mile in every direction of its City Limits." Beulah Ordinance No. 145, ¶ 1.4. Therefore, Mercer County's zoning ordinance on abandoned automobiles will apply up to, but not within, one-half mile from Beulah's city limits.

Sincerely,

Wayne Stenehjem
Attorney General

eee/vkk

cc: James O. Johnson, Mercer County State's Attorney

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. See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).

² Ordinances may include criminal penalties. City of Jamestown v. Tahrán, 657 N.W.2d 235 (N.D. 2003).

³ See N.D.A.G. 98-L-113.

⁴ A city's extraterritorial jurisdiction to regulate subdivisions is the same as its extraterritorial zoning jurisdiction. N.D.C.C. § 40-48-18(1).