

**LETTER OPINION
2005-L-16**

May 31, 2005

Mr. John Van Grinsven III
Ward County State's Attorney
PO Box 5005
Minot, ND 58702-5005

Dear Mr. Van Grinsven:

Thank you for your letter asking whether a city government or a county government is the appropriate governmental agency under N.D.C.C. § 23-35-09 to assess costs incurred in removing or abating a nuisance on real property located outside a city's corporate limits but within the extraterritorial zoning authority or extraterritorial police power authority of that city. It is my opinion the county is the appropriate governmental agency to assess costs against real property under N.D.C.C. § 23-35-09 for land located outside city limits but within a city's extraterritorial jurisdiction.

ANALYSIS

Local boards of health are authorized to order an owner or occupant of property to remove or abate a nuisance, source of filth, or cause of sickness, and if the owner or occupant fails to comply, the "board of health may remove or destroy the nuisance, source of filth, or cause of sickness at the expense of the appropriate city or county, which shall charge the expense against the lot, piece, or parcel of land on which the work is done." N.D.C.C. § 23-35-09(1) (emphasis supplied). The city or county, as the case may be, is to charge and collect the expenses by assessment as other taxes are collected. N.D.C.C. § 23-35-09(2). Although the "appropriate city or county" is to be charged the expense of abating the nuisance and will in turn assess the property for the cost of this work, it is the board of health that actually exercises statutory authority under N.D.C.C. § 23-35-09 to remove or destroy the nuisance.

In conversations with a member of my staff, you and the Minot city attorney noted that cities have extraterritorial jurisdiction in relation to their police powers and zoning.¹

¹ See N.D.C.C. §§ 40-5-01.1, 40-47-01.1, 40-47-03(3). A city may enforce police power ordinances adopted under N.D.C.C. § 40-05-01.1 up to one-half mile outside the city limits. N.D.C.C. § 40-06-01(2); N.D.A.G. 2004-L-34. Cities also may extend their

Because a city could abate a nuisance in the area of its extraterritorial jurisdiction, you question whether, under N.D.C.C. § 23-35-09, a city should be billed for abating nuisances on real property within that area. While a city has authority to address nuisance properties in the areas outside the city limits, when it is the health district's authority that is being exercised to abate a nuisance under N.D.C.C. ch. 23-35, it is that chapter which must be examined to determine what "the appropriate city or county" means for purposes of charging the expenses against the real property on which the work is done.

Interpreting the meaning of a statute presents an issue of legislative intent. State v. Higgins, 680 N.W.2d 645, 649 (N.D. 2004). Legislative intent is primarily ascertained by looking at the language of the statute itself, but extrinsic aids may be examined if the statute's meaning is uncertain. Id. See also N.D.A.G. 98-L-97 ("[S]tatutes that are clear and unambiguous may contain a latent ambiguity when applied to a particular situation."). Here, N.D.C.C. § 23-35-09, when it refers to "the appropriate" city or county, does not address which governmental entity should be billed in the area outside a city's corporate limits but within its extraterritorial jurisdiction. Under these circumstances, it is appropriate to consider the statute's meaning in light of extrinsic aids, including former statutory provisions. N.D.C.C. § 1-02-39(4).

A review of the history and origins of the present N.D.C.C. § 23-35-09 reveals that originally the only local boards of health were those of a city and of a county. 1913 Compiled Laws of North Dakota §§ 404 and 411. The county boards of health could exercise jurisdiction within their counties and outside the corporate limits of cities having a city board of health, and city boards of health exercised jurisdiction within their city limits. 1913 Compiled Laws of North Dakota §§ 407 and 413. Thus, these local boards of health were authorized to assess the costs to abate nuisances on real property through the government of which they were a part, either the city or the county.²

zoning authority outside the city limits to various distances based on the city's population. N.D.C.C. § 40-47-01.1.

² Each local board of health, city or county, had authority to order owners to remove nuisances. 1913 Compiled Laws of North Dakota § 417. The board was entitled to act in default of the owner, and charge the expenses to the owner. 1913 Compiled Laws of North Dakota § 418. By 1960, the law contained provisions not just for city and county boards of health, but also for village and township boards of health and for the creation of health districts. N.D.C.C. chs. 23-03, 23-04, and 23-14 (1960). One of the powers of all local boards of health was to order abatement of nuisances on real property, and if the owner would not abate the nuisance, then the board of health had authority to abate the nuisance itself "at the expense of the county, city, village, or township, as the case may be, but such expense shall be charged against the lots, pieces, or parcels of land upon which the work was done." N.D.C.C. § 23-05-04 (1960).

LETTER OPINION 2005-L-16

May 31, 2005

Page 3

When the Legislature authorized the creation of multi-county health districts and later authorized combining city and county health boards, it provided that the multi-county health district or the combined health boards bill the expenses to the “appropriate” city or county. 1943 N.D. Sess. Laws ch. 220; 1967 N.D. Sess. Laws ch. 202. This language was retained when previous statutes were combined into the present N.D.C.C. ch. 23-35. 1999 N.D. Sess. Laws ch. 242. There is no legislative indication that a city’s extraterritorial jurisdiction be a basis for determining which political subdivision to bill. Rather, the use of the term “appropriate” city or county means the same thing today as it did in 1913. That is, if the nuisance is in the county but outside the city limits, the county is to be billed. If the nuisance is within the city, the city is to be billed. Therefore, it is my opinion that under N.D.C.C. § 23-35-09, the county is the appropriate governmental agency to be billed and to assess costs against land located outside city limits but within a city’s extraterritorial jurisdiction.

Sincerely,

Wayne Stenehjem
Attorney General

eee/vkk

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).