

**LETTER OPINION
2014-L-04**

February 4, 2014

Mr. John T. Shockley
Harwood City Attorney
PO Box 458
West Fargo, ND 58078-0458

Dear Mr. Shockley:

Thank you for your letter asking whether a city may use city residents, who are not sworn law enforcement officers, to issue citations for minor, non-criminal violations of city ordinances.

For the reasons stated below it is my opinion that a city may use city residents, who are not law enforcement officers, to issue citations for minor, non-criminal violations of city ordinances.

ANALYSIS

You stated that the city of Harwood does not have enough local law enforcement to enforce compliance with the city's ordinances related to minor offenses, such as parking tickets or barking dogs, and the city would like local law enforcement to be able to focus on more serious offenses. You stated that the ability to appoint city residents to aid in the enforcement of these ordinances for minor offenses would allow law enforcement to be able to concentrate their attention on more significant criminal violations.

A city has the authority to "regulate the use of streets . . . and to prevent and regulate obstructions and encroachments upon the same."¹ A city also has the authority to "regulate the keeping of dogs,"² "[t]o provide for keeping . . . the peace and quietude of the

¹ N.D.C.C. § 40-05-01(8). See also N.D.C.C. § 39-10-49 (stopping, standing, or parking prohibited in specified places), and N.D.C.C. § 39-10-50 (additional parking regulations).

² N.D.C.C. § 40-05-02(22).

municipality,”³ and “[t]o declare what shall constitute a nuisance and to prevent . . . the same.”⁴

State law also provides that in council cities, “[t]he mayor . . . shall see that the laws and ordinances are faithfully executed”⁵ and “[w]hen necessary, the mayor may call on . . . inhabitant[s] of the city over the age of eighteen years to aid in enforcing the laws and ordinances of the city.”⁶ Similarly, in commission cities, state law provides that “[t]he president of the board of city commissioners . . . shall see that all the laws of the city are enforced.”⁷

Thus, a city has the power to see that its ordinances are enforced. State law does not go into detail about the manner in which a city may enforce its ordinances. The North Dakota Supreme Court has stated:

Once a municipality’s powers have been determined . . . “the manner and means of exercising those powers where not prescribed by the Legislature are left to the discretion of the municipal authorities.” Leaving the manner and means of exercising municipal powers to the discretion of municipal authorities implies a range of reasonableness within which a municipality’s exercise of discretion will not be interfered with or upset by the judiciary.⁸

It appears reasonable to want to free up local law enforcement to focus on more serious offenses by allowing city residents to issue citations for minor, non-criminal violations of city ordinances. In a 1960s case, the Iowa Supreme Court considered the authority of a city to employ so-called “meter maids.” The Court stated:

[A] city’s police officers may properly observe violations of parking meter restrictions and summon violators to appear in court to answer charges based thereon. . . . We perceive no good reason why municipalities may not relieve regular members of the police department from such duties and employ so-called meter maids therefor. This involves merely the manner or means of the city’s exercise of power rather than the existence of the power.⁹

³ N.D.C.C. § 40-05-01(33).

⁴ N.D.C.C. § 40-05-01(44). See also N.D.C.C. §§ 42-01-06 and 42-01-07 regarding public nuisances.

⁵ N.D.C.C. § 40-08-22.

⁶ N.D.C.C. § 40-08-26.

⁷ N.D.C.C. § 40-09-08.

⁸ Haugland v. City of Bismarck, 429 N.W.2d 449, 453-54 (N.D. 1988) (citations omitted).

⁹ City of De Moines v. Reiter, 102 N.W.2d 363, 366-67 (Iowa 1960).

I agree with this analysis and think that appointing city residents to assist local law enforcement in this manner¹⁰ falls within the reasonable discretion of the municipal authorities.¹¹

Therefore, it is my opinion that a city may use city residents, rather than law enforcement officers, to issue citations¹² for minor, non-criminal violations of city ordinances such as those regulating parking and barking dogs.¹³

It would be prudent for the city to discuss its intentions with its insurance carrier to make sure the appointed residents are properly trained and are covered by the city's insurance.

Sincerely,

Wayne Stenehjem
Attorney General

las/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.¹⁴

¹⁰ Citizens issuing citations for minor, non-criminal violations of city ordinances would likely not be "peace officers" subject to licensing and training under N.D.C.C. ch. 12-63 because 1) a "peace officer" more broadly enforces the law and conducts investigations, see N.D.C.C. § 12-63-01, and 2) the citizens could be considered to be "auxiliary personnel," which are not subject to N.D.C.C. ch. 12-63, see N.D.C.C. § 12-63-03.

¹¹ Some North Dakota cities currently use citizens, who are not law enforcement officers, to enforce certain city ordinances. For example, the city of Bismarck uses citizens as "car markers" and "animal wardens." Also, the city of Fargo started employing citizens as "car markers" as early as 1973. See Peltier v. City of Fargo, 533 F.2d 374 (8th Cir. 1976).

¹² See N.D.C.C. § 40-11-11 regarding violations of city ordinances.

¹³ State law even allows a private person to make an arrest. See N.D.C.C. §§ 29-06-02 and 29-06-20.

¹⁴ See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).