

**N.D.A.G. Letter to Erickson (Dec. 14, 1988)**

December 14, 1988

Mr. Ralph Erickson  
Assistant City Attorney  
Ohnstad, Twichell Law Firm  
West Fargo State Bank Bldg.  
901 13th Avenue East  
P.O. Box 458  
West Fargo, ND 58078-0458

Dear Mr. Erickson:

Thank you for your letter of November 28, 1988, concerning the authority of non-home rule cities to enact ordinances relating to noncriminal traffic offenses and matters not otherwise addressed by state statute. A member of my staff has contacted you for the purpose of clarifying your inquiry.

Your first inquiry concerns municipal ordinances relating to traffic offenses. You stated to a member of my staff that it is your opinion that municipal ordinances providing penalties for traffic offenses which are also state statute offenses may not deviate from the penalties provided by state law. See N.D.C.C. §§ 2.1-01-05, 40-05-06(2). I concur with your analysis that the penalties for traffic offenses are established by state law and that a non-home rule municipality may not provide penalties which differ from those established by state law. A copy of a 1982 Attorney General's opinion addressing generally this issue is enclosed for your review.

Your second question concerns the ability of a non-home rule municipality to prohibit by ordinance conduct which is not addressed by state law.

When the conduct sought to be regulated by a non-home rule municipality ordinance is not an offense, as defined by N.D.C.C. § 12.1-01-04(20), the only restrictions upon the fines and penalties that can be imposed by the municipality for a violation of an ordinance are the restrictions provided in N.D.C.C. § 40-05-06(1). Except for certain categories of offenses listed in N.D.C.C. § 40-05-06, the fine or penalty for the violation of any ordinance, resolution, or regulation of a city may not exceed \$500 and the imprisonment may not exceed thirty days. Id.

State law does not prohibit a municipality from imposing a lesser penalty than that listed in N.D.C.C. § 40-05-06(1) for conduct not defined as an offense under N.D.C.C. § 12.1-01-04(20). A city ordinance regulating or prohibiting the running at large of dogs, for example, would not supersede a state law because such conduct is not defined as an offense under existing state law. Thus, if no state law provided a different penalty, the city could lawfully punish such conduct using the penalty provisions of N.D.C.C.

§ 40-05-06(1).

I hope this response is helpful to you.

Sincerely,

Nicholas J. Spaeth

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Enclosure