

Office of the Attorney General
State of North Dakota

Opinion No. 87-19

Date Issued: October 1, 1987

Requested by: Timothy Wilhelm
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--QUESTION PRESENTED--

Whether N.D.C.C. ch. 40-50.1, requiring the platting of subdivisions and townsites, applies to areas beyond the boundaries and zoning jurisdiction of cities?

--ATTORNEY GENERAL'S OPINION--

It is my opinion that N.D.C.C. ch. 40-50.1, requiring the platting of subdivisions and townsites, applies to areas beyond the boundaries and zoning jurisdiction of cities.

--ANALYSIS--

Chapter 40-50.1 of the North Dakota Century Code imposes obligations on anyone desiring to lay out a townsite, an addition to a townsite, or a subdivision of land. To do so, such person must survey and make a plat of the land. N.D.C.C. § 40-50.1-01. Requirements for the plat's form and content are also set forth. Id. Other sections of the chapter address recording, correcting, and vacating plats.

N.D.C.C. ch. 40-50.1 is in title 40 of the North Dakota Century Code. Title 40 is designated "Municipal Government." This placement of the chapter led to the inquiry whether its application is restricted to cities.

The provisions of N.D.C.C. ch. 40-50.1 are unambiguous; that is, there is nothing in the chapter limiting its application to cities. It is only the placement of the chapter in title 40 that may cast doubt upon the breadth of the chapter's application. Clear statutory language, however, is more helpful in determining intent than is an analysis guided by code placement. Indeed, "[w]ords used in any statute are to be understood in their ordinary sense." N.D.C.C. § 1-02-02; see also N.D.C.C. § 1-02-05. Since N.D.C.C. ch. 40-50.1 does not contain words that limit its application to urban areas, but rather uses words that, in their ordinary sense, require universal application of the chapter, the chapter must apply to rural as well as urban areas. Factors beyond clear language support the view that N.D.C.C. ch. 40-50.1 has broad application.

The predecessor of N.D.C.C. ch. 40-50.1 was N.D.C.C. ch. 40-50. The 1987 Legislature repealed N.D.C.C. ch. 40-50, replacing it with N.D.C.C. ch. 40-50.1. 1987 N.D.Sess.Laws ch. 501, § 20. While the two chapters are similar, significant changes were made that indicate a legislative intent to apply N.D.C.C. ch. 40-50.1 to rural areas. N.D.C.C. ch. 40-50 contained references to "the municipality," "the municipal engineer," and "the city auditor." See, e.g., §§ 40-50-05, 40-50-14, 40-50-16 (repealed 1987). The 1987 Legislature either replaced such references with broader terms or removed them. The term "Jurisdiction" was replaced with "municipality," the term "Chief administrative officer" was replaced with "city auditor," and all references to "municipal engineer" were removed.

It is a rule of statutory construction that if words in a prior statute that express a certain meaning are omitted in a successor statute, presumably a change in meaning is intended. See, e.g., *Bostow v. Lundell Mfg. Co.*, 376 N.W.2d 20, 22 (N.D.1985); *Lingwall v. Hoener*, 483 N.E.2d 512, 515 (Ill.1985); *Craven v. Crout*, 209 Cal.Rptr. 649, 652 (Cal.Ct.App.1985). Therefore, replacement of limiting words regarding cities with broader words means the Legislature intended to expand application of the platting law.

The Legislative Council has prepared the legislative history of House Bill No. 1342, the bill proposing adopting of N.D.C.C. ch. 40-50.1. The history contains comments by citizens supporting the bill, some of which express a belief that the platting law would extend to rural areas. For example, Carl Vender, representing the North Dakota Society of Professional Land Surveyors, testified in support of the bill and was asked this question: "Would these requirements cover all land, including next to a city and rural?" Mr. Vender answered: "Yes, any area in the state." Hearings on H. 1342 before the House Committee on Political Subdivisions, 50th Leg. (Feb. 5, 1987). There is also in the history an indication that members of the House Political Subdivisions Committee, the House committee responsible for reviewing Bill No. 1342, thought it would apply beyond cities. See Hearings on H. 1342 before the House Committee on Political Subdivisions, 50th Leg. (Feb. 13, 1987).

Legislative history may be used in determining legislative intent. N.D.C.C. § 1-02-39(3). To determine legislative intent, however, one may only cautiously rely upon comments of a legislator or interested party. *Snyder's Drug Stores, Inc. v. North Dakota State Board of Pharmacy*, 219 N.W.2d 140, 147 (N.D.1974). Even so, the legislative history of Bill No. 1342 does add support to the conclusion that N.D.C.C. ch. 40-50.1 has broad application.

I recognize that N.D.C.C. ch. 11-33.2 empowers county commissioners to regulate subdivisions of land. Before doing so a resolution is to be adopted and it may include "[p]rovisions for the

submittal and processing of plats, and specifications for such plats ..." N.D.C.C. § 11-33.2-04(1). This statute does not create an inconsistency for counties if they are subject to N.D.C.C. ch. 40-50.1. There is nothing inconsistent with a county being bound by the requirements of N.D.C.C. § 40-50.1-01 regarding the form and content of plats and the power given in N.D.C.C. § 11-33.2-04(1) to adopt provisions regarding specifications for plats. Such specifications may expand and define the requirements of N.D.C.C. § 40-50.1-01.

--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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