

LETTER OPINION
2000-L-52

April 4, 2000

Mr. John R. Gregg
Bottineau County State's Attorney
PO Box 26
Bottineau, ND 58318-0026

Dear Mr. Gregg:

Thank you for your letter inquiring whether a multicounty health district has jurisdiction to abate a nuisance consisting of a house within a city which has not contracted to be part of the local multicounty health district.

The laws concerning public health units were substantially modified during the most recent legislative session. 1999 N.D. Sess. Laws ch. 242 (codified at N.D.C.C. ch. 23-35). As part of this update, a new requirement was added that all land in the state must be joined to a public health unit¹ before January 1, 2001. N.D.C.C. § 23-35-02. By January 1, 2001, therefore, a city must either form a public health unit or join an existing county or multicounty public health district.

Former law concerning local city, county, or multicounty health districts did not require a city to belong to a county or multicounty health district. N.D.C.C. § 23-14-01 (Michie 1991) (repealed effective August 1, 1999). Therefore, it is my opinion that a county or multicounty health district does not have jurisdiction in a city that has not joined the health district.

However, all cities have authority over buildings or structures which become nuisances. N.D.C.C. § 40-05-02(23) provides:

Substandard buildings or structures. The governing body of any city shall have the authority to provide by ordinance for the demolition, repair, or removal of any building or structure located within the limits of such city or other territory under its jurisdiction, which creates a fire hazard, is dangerous to the safety of the occupants or

¹ A health district is a multicounty or city-county entity formed under N.D.C.C. §§ 23-35-04 or 23-35-05 while the term public health unit includes city or county boards of health and health districts. N.D.C.C. § 23-35-01(4) and (8).

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persons frequenting such premises, or is permitted by the owner to remain in a dilapidated condition. Any such ordinance must provide for written notice to the owner of a hearing by the governing body before final action is taken by such body. It must also provide a reasonable time within which an appeal may be taken by the owner from any final order entered by such governing body to a court of competent jurisdiction. This subsection in no way limits or restricts any authority which is now or may hereafter be vested in the state fire marshal for the regulation or control of such buildings or structures.

This statute, in substantially identical form, was found to be adequate legislative authority to support an ordinance under the city's police power calling for the condemnation and removal of a substandard residence. Pic v. City of Grafton, 339 N.W.2d 763, 764-765 (N.D. 1983). As the destruction of a house without compensation to the owner is an extreme remedy, ample opportunity should be given to the owner to repair the premises or otherwise bring the structure into a lawful, safe, and wholesome condition. See City of Minot v. Freelander, 368 N.W.2d 514 (N.D. 1985), after remand 380 N.W.2d 321 (N.D. 1986), and after remand 426 N.W.2d 556 (N.D. 1988).

Another option available to you as a state's attorney is to pursue an action for abatement of the building as a nuisance. N.D.C.C. §§ 42-02-01, 42-01-09. A nuisance consists of unlawfully doing an act or omitting to perform a duty, the result of which annoys, injures, or endangers the comfort, repose, health, or safety of others or in any way renders other persons insecure in life or in the use of property. N.D.C.C. § 42-01-01. A public nuisance is a nuisance that affects an entire community or a neighborhood, or any considerable number of persons. N.D.C.C. § 42-01-06. The remedies against a public nuisance include indictment, filing an information, or bringing a criminal action before a district judge, bringing a civil action, or pursuing abatement under N.D.C.C. ch. 42-02. N.D.C.C. § 42-01-07.

Even though the multicounty health unit does not have jurisdiction in the city, individuals employed by the multicounty health unit may be employed or utilized as experts for purposes of an action by the city under an ordinance enacted pursuant to N.D.C.C. § 40-05-02(23) or in an action you might bring against a nuisance under N.D.C.C. title 42.

Sincerely,

Heidi Heitkamp

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Attorney General

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