

N.D.A.G. Letter to Reichert (Oct. 16, 1998)

October 16, 1998

Mr. Ronald A. Reichert
Medora City Attorney
PO Box K
Dickinson, ND 58602-8305

Dear Mr. Reichert:

Thank you for your letter in which you inquired whether the City of Medora would be required to pay transportation and detention expenses under the court services contract entered into between the City of Medora and the State of North Dakota pursuant to N.D.C.C. § 40-18-06.2 in cases involving class A misdemeanors.

A municipal court case may be transferred to the district court in one of two ways. N.D.C.C. § 40-18-06.2 permits a city to transfer some or all of the cases of the municipal court to the district court upon agreement of the governing body of the county, the presiding judge of the judicial district in which the city is located, and the state court administrator. N.D.C.C. § 40-18-15.1 allows transfer of a municipal court case to the district court for trial if the defendant requests, within 28 days after arraignment, that the case be transferred to the district court to permit the defendant to exercise that defendant's right to a jury trial.

In each of these instances, a municipal court case is being transferred to the district court.

N.D.C.C. § 40-18-06.2 provides:

With the agreement of the governing body of the county, the presiding judge of the judicial district in which the city is located, and the state court administrator, the governing body of a city may, by ordinance, transfer some or all of the cases of the municipal court to the district court serving the county in which the city is located. These cases are deemed district court cases for purposes of appeal. The governing body of a city with a population of less than five thousand, upon transferring all municipal court cases to the district court, may abolish by resolution the office of municipal judge. The term of office of the municipal judge elected to serve that city terminates upon the date the governing body of the city abolishes the office of municipal judge.

Since only "cases of the municipal court" are transferred to the district court pursuant to the agreement executed in accordance with this section, the city's responsibilities under the agreement will apply only to those agreed upon costs and expenses incurred in

"cases of the municipal court." Actions which are not "cases of the municipal court" are not the subject matter of a section 40-18-06.2 agreement.

N.D.C.C. § 40-18-01(l) establishes the jurisdiction of a municipal judge to hear, try, and determine offenses against the ordinances of the city. However, the municipal court has no jurisdiction to hear, try, and determine an offense which would be a violation of N.D.C.C. § 39-08-01 or equivalent ordinance if a person has been convicted of two section 39-08-01 or equivalent ordinance violations within the previous five years or three such violations within seven years proceeding the commission of the offense charged. N.D.C.C. § 40-18-01(3).

N.D.C.C. § 39-08-01(2) establishes the penalties for driving while under the influence or actual physical control offenses. A first or second offense within a five year period is classified, under both N.D.C.C. § 39-08-01 or equivalent ordinance, as a class B misdemeanor. A class B misdemeanor is punishable by imprisonment of up to 30 days, a \$1,000 fine or both. N.D.C.C. § 12.1-32-01(6). A third offense in a five year period is punishable as a class A misdemeanor punishable by a maximum penalty of one year's imprisonment, a fine of \$2,000 or both. N.D.C.C. § 12.1-32-01(5).

N.D.C.C. § 40-18-01(3) clearly establishes that municipal judges have jurisdiction, to hear, try, and determine DUI or actual physical control offenses chargeable under a N.D.C.C. § 39-08-01 equivalent ordinance which would be classified as class B misdemeanor offense. The class A misdemeanor offense, a third violation of N.D.C.C. § 39-08-01 or equivalent ordinance, would not be within the jurisdiction of the municipal court to hear, try, or determine. Rather, in the case of a DUI or actual physical control offense charged in municipal court which involves a third or subsequent offense which would impose a class A misdemeanor or above penalty classification, the municipal court case must be dismissed, without prejudice, and the charge must then be filed in the district court. I have enclosed with this letter a copy of a letter dated May 12, 1989, to Erik R. Johnson, city prosecutor for the City of Fargo, which generally discusses the application of N.D.C.C. § 40-18-01(3) to offenses filed in municipal court.

The limitation of the municipal court jurisdiction in DUI and actual physical control offenses involving class A misdemeanors in N.D.C.C. § 40-18-01(3) is consistent with the municipal ordinance penalty limitations established by the Legislative Assembly.

N.D.C.C. § 40-05-06 limits the maximum penalty for a violation of any ordinance, resolution, or regulation of a city to no more than 30 days imprisonment or a \$1,000 fine. These penalty limitations are consistent with the class B misdemeanor penalty classifications set forth N.D.C.C. § 12.1-32-01(6). It is apparent that the Legislative Assembly intended that a city could not impose a penalty for violation of a municipal ordinance in excess of a state-equivalent class B misdemeanor offense.

Because of these statutory sentence limitations, no penalty imposed for violation of a municipal ordinance could be equivalent to a class A Misdemeanor as defined in N.D.C.C. § 12.1-32-01(5).

Since there can be no class A misdemeanor offense for violation of a municipal ordinance, there could be no class A misdemeanor offense transferred to the district court pursuant to N.D.C.C. § 40-18-06.2. If an offense has been charged in municipal court under a municipal ordinance which imposes class B misdemeanor equivalent penalties, once a decision is made to charge the offender with a greater offense, such as a class A misdemeanor or a felony, the municipal court case would be dismissed and new charges would be filed in district court by the county prosecutor for violations of state law, as opposed to municipal ordinance.

The law does not recognize a class A misdemeanor municipal ordinance violation. Any class A misdemeanor charged in district court is for an offense charged under state law rather than under municipal ordinance. These class A misdemeanor offenses are not "cases of the municipal court" which are the subject matter of a N.D.C.C. § 40-18-06.2 agreement.

Under the agreement, the city of Medora is responsible for any necessary transportation and detention expenses for defendants in cases transferred under the agreement. Unless the case was a municipal court case transferred pursuant to law, the city would have no responsibility for such expenses. A class A misdemeanor offense is not an offense within the municipal ordinance limitations nor within the jurisdiction of the municipal court. As a result, such an offense is not a "case of the municipal court" that would be transferred to the district court.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

rpb/vkk
Enclosure