

**LETTER OPINION
2003-L-11**

February 25, 2003

Representative Merle Boucher
House Minority Leader
District 9
606 Highland Street
Rolette, ND 58366-0007

Dear Representative Boucher:

Thank you for your request for my opinion on two issues. You first ask whether the Cass County Commission must receive the North Dakota State Historical Board's authorization prior to demolishing the former Cass County Sheriff's residence. I understand the former Cass County Sheriff's residence is listed on the National Register of Historic Places. See 16 U.S.C. §§ 470, et seq. The director of the State Historical Society has also, by letter dated December 3, 2002, to Alon Wieland of the Cass County Commission, deemed that the former residence "is significant in understanding and interpreting the history of the state, and is entitled to receive protection pursuant to Section 55-02-07 of the North Dakota Century Code."

The State Historical Society director's invocation of the broad authority given the director in N.D.C.C. § 55-02-07 severely restricts Cass County's ability to destroy the former residence. As I opined recently regarding the McLean County Courthouse, "N.D.C.C. § 55-02-07 specifically states that significant sites, such as the McLean County courthouse, may not be destroyed without the State Historical Board's approval." N.D.A.G. 2001-L-48. Similarly, because the State Historical Society director has determined that the former Cass County Sheriff's residence is entitled to the protections provided in N.D.C.C. § 55-02-07, it is my opinion that Cass County may not destroy the residence without the State Historical Board's approval.

You also ask for my opinion on "whether the Cass County Home Rule Charter enables an injunction be placed on the proposed described demolition" of the former Cass County Sheriff's residence. Cass County's home rule charter has very little to do with the issue of whether a court may issue an injunction against the proposed demolition of the residence. "The extent and scope of a city's home rule power must be construed strictly and may not be exercised in a manner which conflicts with general laws which deal with matters of

LETTER OPINION 2003-L-11
February 25, 2003
Page 2

statewide concern.” N.D.A.G. 2000-F-15. The same holds true for a county’s home rule power. Since the protection of historical sites is a matter of statewide concern, counties do not have the power to adopt home rule charters or implementing ordinances varying the protection provided in N.D.C.C. §55-02-07. Thus, it is my opinion that Cass County’s home rule charter does not affect the question of whether a court may issue an injunction against the proposed demolition of the former Cass County Sheriff’s residence.

Sincerely,

Wayne Stenehjem
Attorney General

SAM/vkk