

LETTER OPINION
2005-L-27

October 4, 2005

Mr. Lonnie W. Olson
Ramsey County State's Attorney
524 4th Ave NE Unit 16
Devils Lake, ND 58301-2490

Dear Mr. Olson:

Thank you for your letter asking whether N.D.C.C. § 23-25-11(9) prohibits Ramsey County from enacting zoning regulations pertaining to animal feeding operations ("AFOs"). It is my opinion that N.D.C.C. § 23-25-11(9) does not prohibit Ramsey County from enacting such zoning regulations. The county's authority, however, is limited by N.D.C.C. §§ 11-33-02 and 23-25-11(9) to regulating the nature, scope, and location of AFOs. Your letter does not ask and this opinion does not address whether Ramsey County's ordinance meets or exceeds these limits.

ANALYSIS

Ramsey County adopted an animal feeding ordinance in 2004. An application for an AFO permit was submitted in the spring of 2005 but denied by the county under its animal feeding ordinance.

Counties, of course, have only the authority granted by statute. County of Stutsman v. State Historical Society of North Dakota, 371 N.W.2d 321, 329 (N.D. 1985). A question arose about the scope of the county's authority to deny the requested AFO permit in light of recent amendments to N.D.C.C. § 23-25-11. The Legislature amended the statute by, among other things, adding subsection 9. 2005 N.D. Sess. Laws ch. 243, § 1. Subsection 9 states:

Neither a county nor a township may regulate or through any means impose restrictions or requirements on animal feeding operations or on other agricultural operations except as permitted under sections 11-33-02 and 58-03-11.

According to your request, certain individuals read N.D.C.C. § 23-25-11(9) to prohibit counties from regulating AFOs. This position contradicts the plain language of the

statute. Section 23-25-11(9) does not prohibit counties from regulating AFOs. It states that counties lack such authority “except as permitted under section[] 11-33-02.” (Section 58-03-11 deals with the authority of townships.) In other words, a county’s regulatory authority over an AFO is defined by section 11-33-02. Section 11-33-02(2) deals specifically with AFOs. Counties may “regulate the nature and scope of concentrated feeding operations permissible in the county” N.D.C.C. § 11-33-02(2). Additionally, “[a] regulation addressing the development of a concentrated feeding operation in the county may set reasonable standards, based on the size of the operation, to govern its locations.” N.D.C.C. § 11-33-02(3).

This authority, however, is subject to restrictions. A county zoning “regulation may not preclude the development of a concentrated feeding operation. N.D.C.C. § 11-33-02(3); see also N.D.C.C. § 11-33-02(1) (counties may not regulate in a manner that prohibits farming or ranching, and defining “farming or ranching” to include livestock feeding and production operations). Further, county zoning may not impose substantial economic burden on a previously existing concentrated feeding operation. N.D.C.C. § 11-33-02(2).

Counties have statutory authority to regulate, through zoning, AFOs. N.D.C.C. § 11-33-02(2), (3). The newly enacted section 23-25-11(9) does not withdraw that authority. It merely states that counties, in exercising their zoning authority, are bound by the limits set in section 11-33-02. It is thus my opinion that Ramsey County may regulate animal feeding operations through zoning to the extent allowed by section 11-33-02.

Sincerely,

Wayne Stenehjem
Attorney General