

**LETTER OPINION
2006-L-18**

May 25, 2006

Mr. Richard Riha
Burleigh County State's Attorney
514 E Thayer Ave
Bismarck, ND 58501-4413

Dear Mr. Riha:

Thank you for your letter regarding the meaning of the word municipality as used in N.D.C.C. § 58-03-13, regarding township zoning. It is my opinion that the word municipality must be interpreted in relation to other state laws regarding township zoning, and it refers to incorporated cities.

ANALYSIS

Two provisions in N.D.C.C. § 58-03-13 address membership in township zoning commissions. A township zoning commission "must consist of three township supervisors and two members appointed from the municipalities concerned in relation to which such zoning is contemplated."¹ If two or more townships establish a joint zoning commission, that commission "must consist of two township supervisors from each township and two members from the municipality in relation to which such zoning is contemplated."² It is my understanding that some township boards believe the reference to municipalities in N.D.C.C. § 55-03-13 may include the township itself.³

Various statutes throughout the North Dakota Century Code define the word municipality, but these definitions are often specifically limited to a single chapter or title, and many of these definitions directly contradict each other.⁴ For example, N.D.C.C. § 11-36-01 defines "municipality" as a political subdivision in relation to port authorities.⁵ Section 21-03-01, N.D.C.C., defines "municipality" as including cities, counties, townships and numerous other political subdivisions in relation to bonding.⁶ The definition of municipality has also been limited to counties and cities,⁷ cities and park districts,⁸ and cities and

¹ N.D.C.C. § 58-03-13.

² Id.

³ Letter from Marilyn Foss to Jake Spitzer, Jan. 4, 2006.

⁴ A computer search in Westlaw database ND-ST for "municipality /s (includes or means)" revealed 40 statutes when accessed on March 6, 2006.

⁵ N.D.C.C. § 11-36-01(4).

⁶ N.D.C.C. § 21-03-01(3).

⁷ N.D.C.C. §§ 40-57-02, 40-57.1-02.

organized or unorganized townships.⁹ The word “municipality,” however, is often restricted to cities, specifically excluding other political subdivisions, such as townships.¹⁰ “Municipality” sometimes is even restricted only to particular cities.¹¹ As a generic legal term, municipality simply refers to local governmental or public bodies that are subordinate to the state and which exist to regulate and administer local or internal affairs for the community.¹² Given the varied meanings for the word municipality in the North Dakota Century Code, legislative intent for the meaning of this term must be found by considering each unique situation where it is used.

The specific statutes that govern township zoning provide insight into the Legislature’s intended meaning of the word municipality in N.D.C.C. § 58-03-13. Townships may establish zoning for a number of purposes, including “to secure the orderly development of approaches to municipalities.”¹³ Further, the description of land within any township zoning district and the regulations and restrictions concerning that district “must be filed with the governing bodies of the township and municipalities concerned.”¹⁴ These township zoning laws use the word municipality in contrast to the township which is contemplating zoning. They indicate that the word municipality, as used in the township zoning laws, refers to incorporated cities.

The law states the township zoning commission “must consist of three township supervisors and two members appointed from the municipalities concerned in relation to which such zoning is contemplated.”¹⁵ A joint zoning commission “must consist of two township supervisors from each township and two members from the municipality in relation to which such zoning is contemplated.”¹⁶ If the township zoning does not concern a city in relation to which such zoning is contemplated,¹⁷ then no members would be appointed from a city and the township zoning commission would consist of three members rather than five; a joint zoning commission would consist of two members from each township.

No state law indicates that a township zoning commission must consist of five members. The law says a township zoning commission “must consist of three township supervisors and two members appointed from the municipalities concerned in relation to which such

⁸ N.D.C.C. § 40-40-02(2).

⁹ N.D.C.C. § 40-55-01(2).

¹⁰ See N.D.C.C. §§ 24-01-01.1(29), 40-01-01(4).

¹¹ N.D.C.C. § 40-22.1-01 (municipality means a city with a population of ten thousand or less).

¹² Black’s Law Dictionary, 918 (5th ed. 1979).

¹³ N.D.C.C. § 58-03-11(1).

¹⁴ N.D.C.C. § 58-03-13.

¹⁵ Id.

¹⁶ Id.

¹⁷ N.D.C.C. § 58-03-13.

zoning is contemplated.”¹⁸ Compare this to the equivalent entity at the county level, the county planning commission:

In counties with three-member boards of county commissioners, the planning commission consists of seven members, of whom at least one must be appointed from the governing body of the city that is the county seat, and of whom at most one may be appointed from the board of county commissioners. In counties with five-member boards of county commissioners the planning commission consists of nine members, of whom at least two must be appointed from the governing body of the city that is the county seat, and of whom at most two may be appointed from the board of county commissioners. . . . The remaining members shall be appointed from the county at large.¹⁹

This law clearly states that a county planning commission must consist of either seven or nine members. In contrast, the law regarding township zoning commissions does not say the township zoning commission must consist of five members.

In conclusion, it is my opinion that the word municipality, as used in the township zoning laws, refers to incorporated cities. In the factual situation where there is no municipality “in relation to which such zoning is contemplated,”²⁰ then no members from a municipality would be appointed, resulting in the township zoning commission consisting of three township supervisors, and a joint township zoning commission consisting of two township supervisors from each township involved.

Sincerely,

Wayne Stenehjem
Attorney General

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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.²¹

¹⁸ Id.

¹⁹ N.D.C.C. § 11-33-04 (emphasis added).

²⁰ N.D.C.C. § 58-03-13.

²¹ See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).