

N.D.A.G. Letter to McLean (March 5, 1991)

March 5, 1991

Ms. Jeanne L. McLean
Bottineau County State's Attorney
P.O. Box 26
Bottineau, ND 58318

Dear Ms. McLean:

Thank you for your February 6, 1991, letter requesting my opinion on whether a township may provide garbage collection either using township funds or charging a fee for the service.

North Dakota Century Code chapter 58-03 governs the powers of a township. "No township shall possess or exercise any corporate powers except those enumerated in this chapter, those specially given by law, and those necessary to the exercise of the powers enumerated or granted." N.D.D.C. § 58-03-02. I have been unable to find any statutory authority for a township to provide garbage collection service within N.D.D.C. § 58-03-01, powers of a township, § 58-03-07, powers of electors, or § 58-06-01, powers of township supervisors.

This lack of authority is in marked contrast to the authority granted specifically to the board of county commissioners "[t]o establish a garbage and trash collection system encompassing all or any part of the territory of the county." N.D.D.C. § 11-11-14(13). This section further provides for the financing of a garbage and trash collection system including fees charged to persons receiving direct benefits. Further, the Legislature has specifically authorized a board of county park commissioners to create garbage removal service districts and provide garbage collection services within such districts. N.D.D.C. § 11-28.1-01.

Cities, likewise, are given the statutory authorization to establish and operate a garbage and rubbish collection and removal system with the costs charged to the owner or occupant of the property served. N.D.D.C. § 40-05-01.1.

The only statute which could arguably authorize a township to provide garbage collection services is found in N.D.D.C. § 58-03-01, which reads:

Each township is a body corporate and has capacity:

....

4. To make such orders for the disposition, regulation, or use of its corporate property as may be deemed conducive to the interests of its inhabitants.

(This statutory provision was considered in an earlier opinion by this office, which stated "section 58-03-01 seems to us to be a general statement of the capacity of a township as a political subdivision, but [the township's] activities are limited to the 'powers' granted to it by the legislature, either expressly or by implication." Letter from Assistant Attorney General Leslie R. Bergum to John Gartner (May 19, 1968).) Because the Legislature has used specific statutory language to allow garbage collection services by cities, county park boards, and county commissioners, in my opinion the general language of N.D.D.C. § 58-03-01(4) is insufficient to allow a township to offer garbage collection services, regardless of the funding arrangements.

Sincerely,

Nicholas J. Spaeth

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