

## **N.D.A.G. Letter to Solberg (April 5, 1990)**

April 5, 1990

Wayne O. Solberg  
Fargo City Attorney  
P.O. Box 1897  
Fargo, ND 58107-1897

RE: N.D.C.C. § 5-01-05.1

Dear Mr. Solberg:

Thank you for your recent letter concerning the contracting by the city of Fargo with a local entity to provide quarters for intoxicated persons who are incarcerated pursuant to N.D.C.C. § 5-01-05.1. This question arose as the result of the recent refusal of Cass County to accept intoxicated individuals in the Cass County Jail for detoxification.

N.D.C.C. § 5-01-05.1 was adopted by the 1969 Legislative Assembly to provide a means of protection for intoxicated individuals. The 1969 legislation repealed provisions authorizing the prosecution of individuals for public intoxication.

N.D.C.C. § 5-01-05.1 grants a peace officer the authority to take an apparently intoxicated person into custody. However, the intoxicated person may be taken into custody by the peace officer only to transport the intoxicated person to his or her home, to a local hospital, or to a jail for purposes of detoxification when the person constitutes a danger to himself or others. The scope of a peace officer's authority to take an intoxicated person into custody and detain that person is limited to these specific provisions of N.D.C.C. § 5-01-05.1. In other words, a peace officer would have no authority to take an intoxicated person into custody and detain that person in a place other than set forth in that statute.

However, a privately operated facility may be considered to be properly within the city's jail system established pursuant to N.D.C.C. ch. 12-44.1.

N.D.C.C. § 12-44.1-02 requires that a city establish a jail, contract for jail services, or establish and maintain a regional corrections center in conjunction with other counties and cities. That section provides, in part:

A city or county may contract for adult jail services and juvenile detention services with a privately operated jail facility or juvenile detention center. Contracts with private agencies providing adult jail or juvenile detention services may be entered into for up to seven years.

A city may enter into such a contract as a part of its statutory jail system. However, the privately operated jail facility may be subject to the provisions of N.D.C.C. ch. 12-44.1 and

rules and regulations promulgated by the Department of Corrections which establish minimum standards for the construction, operation, and maintenance of the facility.

Since July 1, 1989, the Department of Corrections has assumed the responsibility for the inspection and general overview of local jails and correctional centers. I would suggest that you contact the Department of Corrections to discuss the city of Fargo's alternatives in the custody of intoxicated individuals.

It is also important to note that the restrictions placed upon a peace officer to detain and transport an intoxicated person under N.D.C.C. § 5-01-05.1 may not apply to those situations in which the person is detained under other provisions of law such as the laws of arrest or the commitment procedures of N.D.C.C. ch. 25-03.1.

I trust that I have adequately responded to your inquiry.

Sincerely,

Nicholas J. Spaeth

dfm

cc: Elaine Little