

N.D.A.G. Letter to Parker (Aug. 5, 1986)

August 5, 1986

Honorable William C. Parker
State Senator
216 12th Street SW
Rugby, ND 58368

Dear Senator Parker:

Thank you for your letter of July 9, 1986, which we received on July 23, 1986, concerning the authority of a city to operate a garbage collection service in neighboring communities.

In North Dakota, the question concerning the city's ability to collect and dispose of garbage has been addressed by our supreme court. In 1953, in Tayloe v. City of Wahpeton, 62 N.W.2d 31 (N.D. 1953), the supreme court indicated that, under the police power granted to it by the state, a city has the authority to pass an ordinance regulating garbage collection and disposal for the promotion of health and for the suppression of disease. N.D.C.C. § 40-05-01(1)(45). Furthermore, the court indicated that collection and disposition of garbage is not a private enterprise, but is a municipal duty which the city, under the police powers granted to it, must carry on by itself or through its agent. This decision is in accordance with the general rule of many jurisdictions that the city's ability to collect and dispose of garbage within its boundaries is in furtherance of its police power and constitutes a governmental function. 56 Am. Jur.2d Municipal Corporations, Etc. 456, 461 (1971).

However, in the situation described in your letter, the facts apparently indicate a city-owned garbage collection service is competitively bidding for the collection of garbage in other cities. Thus, we are faced with the issue of whether a city has the authority to engage in the commercial enterprise of garbage collection and disposal outside of its boundaries.

In North Dakota, the constitution provides that political subdivisions possess only those powers provided for by law. N.D. Const. Art. VII, §2. As previously indicated, cities do have the authority to collect and dispose of garbage. N.D.C.C. §40-05-01(1)(45); Tayloe v. City of Wahpeton. However, this authority is pursuant to a city's police power and is provided within the context of a governmental function as opposed to a commercial enterprise.

The rule has been stated by several jurisdictions that the primary purpose of a municipal corporation is to contribute toward the welfare, health, happiness, and public interest of its inhabitants. Therefore, the conclusion has been made that municipal corporations have no extraterritorial powers, but that their jurisdiction ends at the municipal boundaries and cannot, without specific legislative authority, extend beyond their geographical limits. 56

Am. Jur.2d Municipal Corporations, Etc. 228 (1971). In reviewing the North Dakota Century Code, one does locate several instances where the Legislature has authorized a city to possess extraterritorial powers. See, e.g., N.D.C.C. §§ 40-22-03 (acquiring land for sewers and water supplies), 40-34-01 (construction and operation of garbage disposal facilities). However, one is unable to locate any authority bestowed upon a city to act as a collector and disposer of garbage outside of its geographical limitations.

In light of the rule of law which requires cities to act only as authorized by the Legislature and given the lack of specific legislative authority to engage in the specific business enterprise of garbage collection and disposal outside of the its city limits, the only conclusion which may be drawn is that a city does not have the authority to operate a garbage collection service in neighboring communities. However, cities may mutually agree for the joint operation of a garbage collection service within their boundaries pursuant to N.D.C.C. § 54-40-08(1).

Sincerely,

Nicholas J. Spaeth

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