

N.D.A.G. Letter to Schoenwald (Sep. 2, 1987)

September 2, 1987

Senator Larry W. Schoenwald
State Senator, Fifth District
1011 18th Avenue S.W.
Minot, ND 58701

Dear Senator Schoenwald:

Thank you for your letter dated August 9, 1987, in which you inquire as to the authority of a board of county commissioners to pass an ordinance to control dogs within the county.

N.D. Const. art. VII, § 2, provides as follows:

Section 2. The legislative assembly shall provide by law for the establishment and the government of all political subdivisions. Each political subdivision shall have and exercise such powers as provided by law.

(Emphasis supplied.)

This section clearly clothes the Legislature with the power to establish counties as political subdivisions. Further, it gives counties, as political subdivisions of the state, the authority to exercise those powers provided by law.

The powers of a board of county commissioners are set forth in N.D.C.C. § 11-11-14. Nowhere in this section is the authority provided to pass ordinances for the control of dogs. N.D.C.C. § 11-11-14(17) provides, in relevant part, as follows:

11-11-14. Powers of board of county commissioners. The board of county commissioners shall have the following powers:

. . . .

17. To do and perform any other duties prescribed by law.

(Emphasis supplied.)

Subsection 17, as set forth above, grants a board of county commissioners the authority to perform such other duties as may be prescribed by law. However, a review of the applicable laws of the state fails to reveal any county authority to enact ordinances for the control of dogs.

An exception to this conclusion may be found in the form of county government known as "home rule." N.D.C.C. § 11-09.1-05 provides, in relevant part, as follows:

11-09.1-05. Powers. After the filing with the secretary of state of a charter approved in reasonable conformity with this chapter, the county and its citizens may, if included in the charter and implemented through ordinances:

....

5. Provide for the adoption, amendment, repeal, initiative, referral, enforcement, and penalties for violation of ordinances, resolutions, and regulations to carry out its governmental and proprietary powers and to provide for public health, safety, morals, and welfare. However, this subsection does not confer any authority to regulate any industry or activity which is regulated by state law or by rules adopted by a state agency.

....

The people of all counties coming within this chapter have the full right of self-government in all matters within the powers enumerated in this chapter. The statutes of this state, so far as applicable, continue to apply to counties, except as superseded by the charters of the counties or by ordinances passed pursuant to the charters.

Pursuant to N.D.C.C. § 11-09.1-05, "home rule" counties may enact ordinances for the control of dogs provided, however, the charters of those counties permit the enactment of such ordinances. Otherwise, counties which are not "home rule" counties may not enact ordinances for the control of dogs, as the authority for the enactment of such ordinances is not provided by law.

Persons may complain, however, whenever a dog becomes a public nuisance. N.D.C.C. ch. 42-03 allows the county and municipal judges to hear complaints as to dogs molesting persons traveling on public streets. The complaint procedure provided for in N.D.C.C. ch. 42-03 is not contingent upon the enactment of ordinances regulating dogs.

Sincerely,

Nicholas J. Spaeth

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