

**N.D.A.G. Letter to Witham (Nov. 16, 1988)**

November 16, 1988

Mr. Lyle Witham  
McHenry County State's Attorney  
P.O. Box 390  
Towner, ND 58788

Dear Mr. Witham:

Thank you for your recent letter of November 4, 1988, in which you have set forth certain questions and your conclusions pertaining to the law enforcement duties and responsibilities of a sheriff within incorporated cities. I generally agree with all conclusions reached by you in that letter.

N.D.C.C. § 11-15-03 sets forth the general duties of the sheriff pertaining to criminal and non-criminal violations of law. Specifically, N.D.C.C. § 11-15-03(1), (2), (3), and (11) provide as follows:

11-15-03. Duties of sheriff. The sheriff shall:

1. Preserve the peace.
2. Arrest and take before the nearest magistrate, or before the magistrate who issued the warrant, all persons who attempt to commit or have committed a public offense.
3. Prevent and suppress all affrays, breaches of the peace, riots, and insurrections which may come to his knowledge.
- ....
11. Enforce, personally or through his deputies, all statutes defining traffic violations denominated noncriminal by section 39-06.1-02.

These duties and responsibilities extend throughout the county. A sheriff possesses concurrent jurisdiction with law enforcement officers of an incorporated city to enforce state laws.

However, absent an intergovernmental agreement as authorized by N.D.C.C. ch. 54-40, I agree with your conclusion that the duties of a sheriff as enumerated above do not extend to the enforcement of city ordinances. In addition, I am unaware of any state law requiring

a sheriff to conduct regular and routine patrols of the city or to base deputies within a city to provide law enforcement services.

I recognize the difficulties which may be faced by your sheriff and his deputies caused by a lack of resources and personnel to timely respond to complaints of criminal activity within the county. This is a problem which is faced by many of the law enforcement agencies within and outside North Dakota. Law enforcement agencies, including those with large staffs and budgets, often must, as circumstances dictate, prioritize responses to citizen complaints or requests for assistance.

If life or health is being threatened or a crime is in progress, these circumstances will naturally dictate a high priority for response. However, depending upon the circumstances of each case, department policy may dictate a differing response to lower priority incidents. Lack of resources and personnel may require a delay in response in those instances, but will not reduce the sheriff's general statutory duties set forth in N.D.C.C. § 11-15-03.

A blanket refusal to respond to a state law violation may not be appropriate if resources and personnel may be otherwise available to make such a response. However, the allocation of scarce resources and personnel might very well require a prioritization of responses to complaints of criminal activity.

The problems presented in your letter involve other issues which may arise on a case-by-case basis. A political subdivision and its law enforcement officers may be subjected to potential civil liability for either a failure to respond or an inadequate response to criminal activity. In addition, the problems facing the sheriff in your county may also require a decision by citizens of your county and cities concerning the amount and quality of law enforcement they expect and need to provide basic law enforcement protection services.

I realize that the county and sheriff can provide only certain services within its resources. To meet the needs of the citizens of a city, a city may very well conclude that it must provide law enforcement protection beyond what can be provided by the general law enforcement authority of the sheriff and his deputies.

I agree with your conclusion that mayors of council cities are not required to exercise the authority given to them by N.D.C.C. § 40-08-20. In addition, I agree that the county cannot require a commission city to enforce violations of its city ordinances. Although a city has authority to establish police services (N.D.C.C. § 40-05-02(2)) and, once appointed, city police officers do possess certain duties and responsibilities (N.D.C.C. § 40-20-05), the decision to provide these law enforcement services is to be made by the city.

I have enclosed with this letter an opinion dated November 5, 1980, concerning the duties and responsibilities of a sheriff in an incorporated city that employed its own police chief. This opinion generally concluded that because an incorporated city employed its own police chief, the duties and responsibilities of the sheriff were not reduced. In addition, in

the absence of an agreement between a county and city, a county would have not statutory authority to charge an incorporated city within the county for law enforcement services provided within the city.

I hope that I have adequately responded to your inquiries. Should you have further questions concerning this matter, please feel free to contact me at your convenience.

Sincerely,

Nicholas J. Spaeth

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Enclosure