

OPINION
66-32

July 13, 1966 (OPINION)

Mr. John A. Zuger, City Attorney

Bismarck, North Dakota

RE: Cities - Police and Fire Protection Beyond Incorporated Limits

This is in reply to your letter of July 6, 1966, relative to the Job Corps Center at Fort Lincoln. You state the following facts and question:

"The Job Corps Center at Fort Lincoln is interested in contracting with the City of Bismarck for police and fire services. Fort Lincoln is a military reservation owned by the United States Government and is located beyond the incorporated limits of the City.

"I request your opinion as to what legal authority does the city in North Dakota have to contract or to furnish police or fire services beyond its corporate limits."

With respect to police services, section 40-20-05 of the North Dakota Century Code provides in part:

"* * * Within the city limits, and for a distance of one and one-half miles in all directions outside the city limits, the police officers and watchmen of the city shall perform the duties and exercise the powers of peace officers as defined and prescribed by the laws of this state. * * * "

We presume the police service provided for Fort Lincoln would not include enforcement of city ordinances within that area since Fort Lincoln is not a part of the City of Bismarck. We further presume police services would consist of enforcing the laws in the same manner as a peace officer would enforce them. Since the police officers are authorized to perform the functions of a peace officer within an area one and one-half miles in all directions from the city limits, we believe the city may contract to provide such services within this area. Whether Fort Lincoln lies within the one and one-half mile area is, of course, a question of fact. It further appears that the above statute limits the jurisdiction of police officers to the city limits and the one and one-half mile area even if a contract purports to authorize such jurisdiction.

One other item should be mentioned in connection with this question. Fort Lincoln is a military enclave. As such the federal government has exclusive jurisdiction for law enforcement thereon. Whether the federal government has ceded such jurisdiction back to the state or has in some manner authorized the enforcement of state law thereon by local police officials is a matter of which we have no knowledge. If the federal government has granted no such authority it would appear the local police officers would have no jurisdiction thereon. See section 54-01-09 of the North Dakota Century Code.

With respect to fire protection outside of the city limits, section 40-05-01 (37) of the North Dakota Century Code provides:

"The governing body of a municipality shall have the power:

* * *

7. FIRE EQUIPMENT - USE BEYOND MUNICIPAL LIMITS. To use its fire department to attend fires and render assistance to other municipalities within or without this state, or to private property, including farm buildings located outside the city limits, and the fire department, its members, and apparatus, when engaged outside the limits of the municipality, shall be deemed to be engaged in the performance of a public duty as fully as if serving within the limits of the municipality;

* * * ."

While the cited statute specifies assistance to other municipalities or to private property, we believe the intent is to permit the furnishing of fire protection to any area outside the city limits whether same be private or public property. We thus believe the city could contract to provide fire protection to Fort Lincoln. We assume that a contract which would require specific functions of the fire department would contain sufficient remuneration that the cost of the activities of the fire department in this regard would not be subsidized by taxation upon the residents and property owners of the municipality.

Cities are agencies of the State and have only the powers expressly conferred upon them by the legislative branch of government or such as may be necessarily implied from the powers expressly granted. See *Ujka v. Sturdevant*, 65 N.W.2d. 292 (ND 1954). We believe the above cited statutes are sufficient grants of power to permit the city to contract with the Job Corps for the specified services, as qualified by the above discussion. We do not, of course, imply that the city is required to contract with the Job Corps to provide such services.

We acknowledge your citation of section 54-40-08 of the North Dakota Century Code, as amended, authorizing any municipality or political subdivision of this state to enter into agreements with one another for joint or cooperative action to carry out any function or duty which may be authorized by law. We are in agreement with your conclusion that same does not apply to contracts between the municipality and the state.

We also acknowledge your reference to Senate Bill 301, introduced into the 1965 Session of the Legislative Assembly, which would have permitted any state agency which controls and manages a state-owned building to contract for certain services, including fire and police protection. This bill was not enacted. However, even if it had been enacted it would not have been applicable to this situation since it applied only to buildings owned by the State of North Dakota. In this instance we understand the buildings are owned by the federal government and not by the state.

In summary, it is our opinion that a city may contract to provide police protection within an area one and one-half miles in all directions from the city limits. The only exception to this statement is those instances in which the federal government has exclusive jurisdiction of an area and has not authorized state or local peace officers to exercise any jurisdiction thereon.

It is our further opinion that a city may contract to provide fire protection outside the city limits whether such protection is furnished to private or governmental property, including that of the United States.

HELGI JOHANNESON

Attorney General